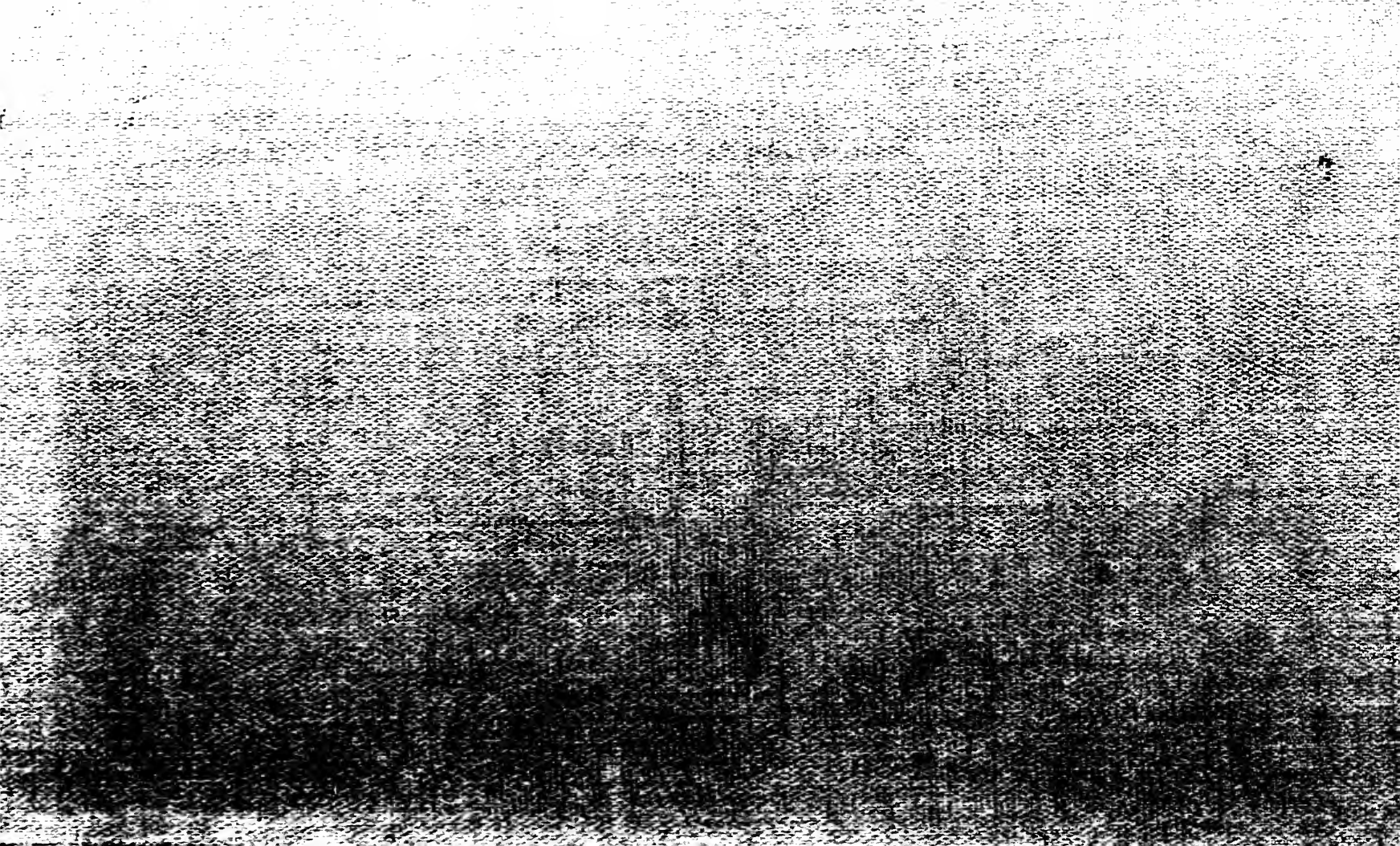

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REPORT

AND

ACCOMPANYING DOCUMENTS

OF THE

VIRGINIA COMMISSIONERS

APPOINTED TO ASCERTAIN THE

BOUNDARY LINE

BETWEEN

Maryland and Virginia.

LIBRARY OF CONGRESS
1881
CITY OF WASHINGTON

RICHMOND:
R. F. WALKER, SUP'T PUBLIC PRINTING.
1873.

IN SENATE, *January* 30, 1873.

Mr. Roller, from the Committee on Federal Relations, reported the following resolution, which was adopted :

Resolved, That the Superintendent of Public Printing be instructed to have printed for the use of the General Assembly the statements made by the commissioners on the part of the State of Virginia and Maryland, in relation to the boundary line between said States, and also the report of the Virginia commissioners to the Governor.

REPORT.

RICHMOND, VIRGINIA, December 18th, 1872.

To his Excellency, GILBERT C. WALKER,
Governor of the State of Virginia :

SIR :

I am instructed by my colleagues on the boundary commission between the states of Virginia and Maryland, to report to you their proceedings since their last report, and to submit a statement on the part of each state, setting forth their respective claims of boundary.

Maryland claims to the South bank of the Potomac, to Smith's point ; thence to Cedar straits, on the E. shore of the Chesapeake bay ; thence up the Pocomoke river to where what is called the Calvert and Scarbrough line crosses that river ; thence by said line to the Atlantic ocean.

Virginia claims to the North bank of the Potomac, to the extreme southern angle of Point Lookout ; thence by a right line to the extremest part of the westermost angle of Watkins point, at the North headland of Little Annamessex river ; and thence by the Calvert and Scarbrough line to the Atlantic ocean, according to the line run in 1668 by the commissioners on the part of the two colonies, fully and finally confirmed by both Lord Baltimore and the royal province of Virginia.

This difference of boundary embraces eminent domain of great value, and the commissioners of the two states are earnestly endeavoring to agree upon a fair and liberal compromise.

The joint commission met first at Annapolis, whence they adjourned, after examining certain records there, to meet at Crisfield, on the line of the Eastern shore, near the initial and closing point of the entire line between the two states. There, and at Smith's island, on the

Tangier sound, they took the depositions of near thirty witnesses touching the marks and traditions of the line; and they found a number of marks on Smiths island, besides the natural head land forming the extremest part of the westermost angle of Watkins point, west of the Pocomoke river.

After full conference and comparison of views, it was agreed that the commissioners of the two states should prepare statements of their respective claims and interchange them simultaneously, at their next joint meeting appointed to be in Baltimore, on the first day of October last.

On assembling, the commissioners of Maryland read and furnished a copy of the statement on the part of Maryland. The statement on the part of Virginia was not completed, but was in part read and in part stated orally.

After a full hearing of extreme claims and pretentions on both parts, various propositions of compromise and concession were reciprocally made and considered, and finally all questions were adjourned to another meeting at the city of Richmond, in November last, by which time the statement on the part of Virginia could be completed. The gentlemen of the Maryland commission came on, and, unfortunately, Mr. Wise of the commissioners of Virginia, was suddenly called off, and Mr. Watts was too ill to attend; no joint meeting was therefore held, and all that could be done was to furnish the commissioners of Maryland with a copy of the statement on the part of Virginia. That has been duly forwarded to the Hon. I. D. Jones, for himself and colleagues; and when they have sufficiently considered it, they will inform the commissioners of Virginia when and where another joint meeting can be held.

Thus the settlement is not yet concluded; but a reasonable hope is confidently entertained that a satisfactory adjustment can and will be agreed on.

The accompanying papers discuss the whole matters of law and fact fully, and will, it is thought, satisfactorially explain the difficulty and delay of this work by its vast volume of history.

Paper "A" is a statement of the commissioners on the part of Maryland. It has no appendix of matter referred to.

Paper "B" is the statement of the commissioners on the part of Virginia.

Paper "C" is the appendix of paper "B," containing the most important matters referred to therein.

Since the last report, two other manuscript volumes of the McDonald papers have been found, in addition to the three volumes found by the commissioners in the state library. There are now five of those volumes, several of them mutilated. The two lately recovered were handed in to the librarian of the state by Mr. Thomas Wynne, of this city, but they were received by the commissioners not in time to be closely examined for the uses of their work, though it is thought that they contain but little pertaining to the subject of boundaries between Maryland and Virginia. The more important evidences of Virginia's claims were to be found in the papers brought by Mr. DeJarnette from England, and they have been found richly worth all the cost and expenditure of sending for them.

The Maryland archives respecting the Calvert and Scarbrough line of 1668, from Watkins point to the ocean, aided by these papers, make the claim of Virginia certain and conclusive.

The cost of sending to England consumed a large part of the appropriations, and that added to the pay of the commissioners, has entirely exhausted them. The state is now in arrears to the commissioners, as the auditor's accounts will show.

If the boundaries are settled by the joint commission, the line will have to be run and permanently marked by a detail of surveyors from the office of the U. States coast survey.

The cost of that, and the pay and arrears of pay of the commissioners, will, it is estimated, require an additional appropriation of ten thousand dollars, ($10,000.)

If not adjusted by the commissioners, most important interests of the state require that she shall resort to the Supreme court of the United States. That will require at least the same amount of appropriation of $10,000 to begin with, and ten times that amount may well be expended to save the state's interests in the riparian rights of the Potomac river; in about 50 square miles of land on Smiths island, and south of the Little Annamessex river, and north of the Pocomoke sound, on the main; and in about 300 square miles of oyster beds, in the Chesapeake bay, and in Tangier and Pocomoke sounds.

During the past year, the town of Crisfield, exactly on the Calvert and Scarbrough line, at its terminus on the Little Annamessex, shucked and shipped to the markets, mainly in the West, one million of gallons of oysters, costing at the place where sold, an average of

one dollar and eight cents per gallon, and bringing in the markets an average profit of 100 per cent.

The place employs 250 vessels, 1,500 catchers, about the same number of openers and packers, has fifteen packing houses, and sells as many oysters in the shell as are sent to market opened. The trade of the mouth of the Little Annamessex in oysters is worth from three to four millions of dollars per annum. Maryland, at present, derives more than four-fifths of its profits and revenue. The stakes in this boundary question, therefore, are worth, on the whole line in dispute, too many millions of dollars to be lightly relinquished or to be neglected.

Your commissioners have, therefore, taken full time for thorough and elaborate investigation, and their task has been immense, in references to history, to manuscripts, to state papers, to the laws of two states, to maps, reports, records, old patents and archives, until they have developed and embodied a mass of valuable history, besides what pertains to the question of boundary, and much of its important matter is new.

They therefore urge that your excellency will lay this report and accompanying papers before the general assembly, with the request of a liberal appropriation to meet either contingency of amicable adjustment or resort to the Supreme court of the United States.

They retain the papers of the commission in their charge, with their journal, until they shall make a final report.

All which is respectfully submitted.

I have the honor to be,

Your Excellency's most obedient servant,

HENRY A. WISE.

By order of the Commissioners on the part of Virginia.

A.

STATEMENT

On the Part of the Commissioners of Maryland.

The Boundary Line between Maryland and Virginia.

Some question has been made as to the accuracy of the commonly-received charter of Maryland, and its English version, as contained in Bacon's Laws, published in 1765; but a careful examination and comparison of the translation of the charter, printed in London in 1635, in the "Relation of Maryland," and as printed in Bacon's Laws in 1765, and as contained in the "Transcript of the original instrument in Latin, with the abbreviations extended, copied from the Patent Roll and Charles I., and translated by Thomas Edlyne Tomlins, Esq., attorney at law and record solicitor, at London, in 1871," for the Virginia commissioners, show that there is no substantial difference among them in the description of the territory granted to Lord Baltimore by the charter of the 20th day of June, 1632, or in any other particular. In Mr. Tomlins' translation, the bounds of the territory are described thus:

"Of a grant to him and his heirs, to Cecil, Baron of Baltimore, the King, &c., to all whom, &c.—Greeting:

"Know ye, therefore, That we, regarding with royal favor the pious and noble purpose and intention of the aforesaid Baron of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by this our present charter for us, our heirs and successors, do give, grant and confirm to the aforesaid Cecil, now Baron of Baltimore, and his heirs and assigns, all that part of the Peninsula or Chersonese lying in the parts of America between the ocean on the east, and the bay of Chesapeake, on the west, divided

from the remnant of the same by a right line drawn from the promontory or headland called Watkins point, beside the bay aforesaid, situate near the river of Wighco, on the west, as far as to the great ocean on the eastern coast, and between that boundary, on the south, as far as to that part of the estuary of the Deleware, on the north, which lieth under the 40th degree of north latitude from the equator, where New England is bounded; and all that tract of land within the boundaries under-written—that is to say, going from the said estuary, called Delaware bay, in a right line, in the degree aforesaid, to the true meridian of the first source of the river of Potomac; then tending downwards towards the south to the further bank of the said river, and following it to where it faces the western and southern coast as far as to a certain place called Cinquack, situate near the mouth of the same river, where it discharges itself into the forenamed bay of Chesapeake, and from thence, by the shortest line, as far as to the aforesaid promontory, or place called Watkins point, so as all the tract of land divided by the line aforesaid, between the great ocean and Watkins point, as far as to the promontory, called Cape Charles, and singular their appendages to us, our heirs and successors, are entirely remaining forever excepted. And also all islands and isles within the limits aforesaid. We do also grant and do confirm to the same Baron of Baltimore, his heirs and assigns all and singular islands and isles on the eastern shore of the aforesaid country, towards the east, risen or to arise in the sea, within ten sea leagues from the same shore, with all and singular ports, roads of shipping, estuaries, flowings of water and arms of the sea, to the country or islands aforesaid belonging."

Where was Watkins Point?

The first inquiry is, where was the point, called Watkins point, described as the beginning bounder, from which was to be drawn the right line across the *peninsula* to the ocean? It is scarcely necessary to remark, after the many proofs we have seen and heard of the great changes in the "points," shores and islands of the Chesapeake bay and its tributaries, which have taken place especially in that vicinity, and within the memory of living witnesses, and which are still going on, that the place called Watkins point, in the charter to Lord Baltimore, has long since been washed away, or does not now exist as it then was.

Let us examine then the description of it as contained in the charter. Mr. Tomlins translates it, "promontory," "headland," or "*place*," the same words which are used in Bacon's translation, while in the "Relation of Maryland," it is called "promontory," or "cape of land," and "place." "Besides the bay aforesaid, situate near the river of Wigheo," (Tomlins;) "situate upon the bay aforesaid, near the river Wigheo," (Bacon;) "situate in the aforesaid bay near the river of Wigheo," (Relation of Maryland.)

In Ogilby's America, published in 1671, "the bounds" of his "New Description of Maryland," in words nearly identical with those in the "Relation of Maryland," are contained, between quotation marks, ending with the last boundary line, thus: "Unto the aforesaid promontory or place, called Watkins point, which lies in thirty-seven degrees and 50 minutes, or thereabouts, of northern latitude." It is probable that the places mentioned in the charter upon the Chesapeake bay, were known with reasonable certainty by intelligent Virginians residing in the Virginia colony at that time. The Chesapeake bay, and many of its principal rivers, had been explored by Capt. John Smith, with fourteen others, in a barge of two or three tons burthen, in June, July and August of 1608, the year after the first settlement at Jamestown. Smith had made a map of his explorations, and had written a general summary of the results of his two expeditions, and some of those who accompanied him had written a more detailed and particular account of his exploration of the bays and rivers and islands, all of which Smith had published in London, first in 1612, and afterwards in 1629. Lord Baltimore had passed the winter of 1628–9 in his province of Avalon, Newfoundland, and had become so dissatisfied with it as a residence, that he wrote to the king, August 19th, 1629, requesting a grant of land in Virginia, with a view to settle there. Without waiting for a reply, he went to Virginia about the first of October, 1629, and visited Jamestown. Beverly, in his history of Virginia, says: "The people there looked upon him with an evil eye, on account of his religion, for which alone he sought this retreat; and by their ill treatment discouraged him from settling in that country." On that account, Beverly states, he made a journey northward, up the Chesapeake bay, with a view of making a new plantation of his own. And finding that the settlement at that time reached no further than the south side of the Potomack river, "his lordship got a grant of the proprietary of Maryland."

Beverly made a mistake in the date of this visit, in stating it to have been in 1628, and in stating the name of the Lord Baltimore who made this visit and exploration as Cecelius, instead of George Calvert; but the fact of his personal explorations of the Chesapeake bay in 1629, enabled him, with the aid of Smith's Hist. and Map, more accurately to describe the bounds of the territory, for which he afterwards obtained a grant. He had been one of the Virginia companies whose charters had been declared forfeited by the judgment of the Court of King's Bench in 1624, upon a writ of quo warranto, and also a member of the provisional government formed by the king, after the province was thus restored to him, and doubtless was well informed about the affairs of the colony. About 1622, the Virginia colony numbered 1,275 whites, 76 of whom lived on the Eastern shore. The settlement on the Eastern shore of Virginia was made in 1620, "neere Accomack," an Indian town, located on Smith's map near the Cherriton, now Cherrystone, river. One plantation was for the use and profit of the company, another for the governor, and one for the secretary of the province, "in lieu of salaries," &c., which plantations were to go to their successors in office. Pory was secretary of the colony, and made two excursions in 1620 to the Eastern shore, an account of which was published in Purcha's Pilgrims, in 1625, and is mentioned in Smith's history, vol. ii., p. 40. Pory mentions passing Russles Isles and *Onancock*, on his way from the Eastern shore to Patuxent, which he visited on the invitation of and in company with the king of a large tribe on that river.

Rogman, vol. 1, p. 149, (note,) says, "the original account of Pory's travels probably contained a description of Russle's isles, Onancock and Patuxent, which Smith thought 'needless to be writ againe' in this part of his work; but it does not appear that Onancock was ever before mentioned by him therein." But it is mentioned as well known to the Virginians at that time. It appears that during the years of 1627, 1628 and 1629, the governor of Virginia gave authority to Wm. Clayborne, the secretary of state, to explore the Chesapeake bay, and this, says Chalmer's Annals, (ch. ix., note 12,) was in pursuance of special instructions from Charles the First to the governor of Virginia to procure exact information of the rivers of the country. Clayborne and his associates were extensively engaged in trading with the Indians of the Chesapeake and its tributaries, and in May, 1631, obtained a license from King Charles I., authorizing him, his associates and company, from time to time, to

trade for corn, furs, &c., with ships, boats, men and merchandise, in all seas, coasts, harbors, lands or territories in or near about those parts of America, for which there is not already a patent granted, to others for sole trade, with command to Governor Henry, of Virginia, to permit such trade; giving to Clayborne full power to direct and govern, correct and punish such of our subjects as may be under his command, in his voyages and discoveries." It was under this license of 1631, to trade, or the former license to explore the Chesapeake and trade, &c., that Clayborne and company assumed to make the settlements upon Kent and Palmer's islands, in the Chesapeake bay, which were afterwards made the basis of objections to Lord Baltimore's charter.

Lord Baltimore's religious faith precluded his taking the oath of supremacy, whereupon he was notified that he could not settle in that colony. After exploring the Chesapeake bay with a view to obtain a grant of land, north of the Virginia settlements, for a plantation of his own, he left his lady in Virginia and hastened to England. On his arrival there he found a letter from the king, dated 22nd November, 1629, advising him to desist from his designs to settle in America. Neill, 47.

Gov. John Pott, Samuel Matthews, Roger Smyth and Wm. Clayborne, in a letter to the Privy Council of November 13, 1629, gave an account of Lord Baltimore's arrival in Virginia, about the beginning of the preceding October, and his refusal to take the oath of supremacy, and prayed, that "As they have been made happy in the freedom of their religion as heretofore, no Papists may be suffered to settle among them." Neill, 47. Probably Lord Baltimore was not aware of this persistent opposition to his settling in Virginia, for in December, 1629, he wrote a letter to King Charles asking a letter from the privy council to the governor of Virginia in behalf of his lady, still there, to aid her in returning to England; and also prays for a grant of a portion of land in Virginia, the king having given him leave to choose a part. (Neills' Terra Marie, 4.)

Doubtless Lord Baltimore's purpose was well known in Virginia, for, during the spring of 1839, "Francis West, who had been governor, Wm. Clayborne, secretary, and Wm. Tucker, one of the council, were in London, resisting the planting of a new colony within the limits of the settled parts of Virginia." (Neill 59.) Under these circumstances [illegible] vince were well considered by the king" [illegible]

the great seal. It had been prepared by Lord Baltimore during his leisure hours; had been submitted to and approved by the king, but before it had passed through all the formalities George Calvert, the first Lord Baltimore, died on the 13th April, 1632. Three months after that date the patent was regularly issued to Cecil, the second Lord Baltimore. Those who had resisted the granting of the patent made immediate efforts to obstruct Lord Baltimore in his preparations to occupy his province. A remonstrance was presented to the king in May 1633, "that some grants have been lately obtained of a great portion of lands, and territories of the colony there, being the places of their traffic, and so near to their habitations, as will give a general disheartening to the planters," &c.

The king, on the 12th May, 1633, referred the petition to the privy council. On the 4th June, 1633, the council appointed the 28th of that month for the hearing, giving notice to all the parties interested to attend. The hearing was had accordingly, and an order was passed that Lord Baltimore and the planters of Virginia (meaning of course their agents and attorneys in England) should meet together, between then and the third of July, 1633, and endeavor to accommodate their controversy in a friendly manner. Also that the propositions made by either party should be set down in writing, with their several answers and reasons, to be presented to the board on that day.

This was likewise accordingly done; and at a meeting of the council, on third July, 1633, they decided "to leave Lord Baltimore to his patent and the other parties to the course of law, according to their desire." Chalmer's Annals, ch. 9, note 18.

Lord Baltimore then proceeded to occupy his patent, and the settlement was made at St. Mary's, on the 27th March, 1634. Clayborne continued his opposition to Lord Baltimore's authority over Kent island, fitted out an armed expedition in 1635, under command of Lieutenant Warren, to seize and capture any of the pinnaces or other vessels belonging to the government of St. Mary's. The government of St. Mary's also armed two pinnaces, under the command of an officer, and the hostile forces met, says Bozman, in April or May, 1635, in either the Pocomoke or Wighcomoco rivers, on the eastern shore of the province, where a battle commenced "which resulted in the death of Lieutenant Warren and two of his men, and of one of the Maryland men." Bozman's Hist. of Md. i. vol., 35.

Clayborne had before this fled to Virginia, and Governor Harvey declined to surrender him to the demand of the governor of the Mary-

land province, but sent him and the witnesses to England. Here Clayborne and his partners in trade (two merchants in London) presented a petition to the king, about 26th February, 1637, setting forth that, by "virtue of a commission under his majesty's hand divers years past, they discovered and planted the isle of Kent, in the bay of Chesapeake, which island they had bought of the kings of that country; that great hopes for trade of beavers and other commodities were like to ensue by the discoveries; and that Lord Baltimore, observing this, had obtained a patent," &c. They then gave their version of the "battle," and of Lord Baltimore's seizure of the isle of Kent and another island at the head of the bay, which they purchased from the Indians, and upon which they had settled a plantation and factory, &c. They prayed for a grant of confirmation "for the quiet enjoyment of their said plantations," and to refer their "wrongs and injuries to such person as his majesty should think fit." The petition was referred to the lord's commissioner of plantations, who, after "a tedious controversy, and after hearing all parties, made their adjudication on the 4th April, 1638." A copy of their report is recorded in the Maryland Records of Council Proceedings, from 1636 to 1657, p. 8. A copy is also published in Hazard's Collections, vol. i, p. 130, purporting to be from "Votes of Assembly of Pennsylvania," and by Chalmer's Annals, ch. 9, note 25, taken, as he states, from "Maryland Papers, vol. i, bundle C, in the plantation office, England." A copy is also published in Bozman's Maryland, vol. 2, p. 584, note xi. The substance of their adjudication was "that the lands in question absolutely belonged to Lord Baltimore, and that no plantation or trade with the Indians ought to be allowed within the limits of his patent without his permission; that with regard to the violences complained of, no cause for any relief appeared, but that both parties should be left to the ordinary course of justice." Clayborne, assisted by Sir Wm. Alexander, the king's secretary for Scotland, and Clayborne's patron in the business, "partly by misrepresentation," as Chalmers observes, procured a letter from the king, dated 14th July, 1638, to Lord Baltimore, commanding him to permit Clayborne and his partners to be safe in their persons and goods there till that course be decided. Lord Baltimore, on receiving the order, as Chalmers proceeds to state, said that he "would wait on the king and give him perfect satisfaction." Subsequent events justify us *in* supposing that when the king came to be fully informed of all the circumstances relative to Clayborne's claims, and Lord Baltimore's rights, the adjudication of

the lord's commissioners was finally ratified by his majesty. Bozman, vol. 2, p. 72. "In virtue of this decision of the lord's commissioners, and, most probably, in pursuance of some special order from his majesty to that purpose, the governor of Virginia, Sir John Harvey, issued his proclamation, bearing date the 4th of October, 1638." Bozman's Maryland, vol. ii, p. 72. This proclamation (copied from the said "Council Proceedings from 1636 to 1657, p. 319," and published in Bozman's, History of Maryland, vol. ii, p. 586,) is in the following words, to-wit:

"By the Governor and Captain General of Virginia, with the advice and consent of the Council of State.

"*A Proclamation.*

"Whereas, the king's most excellent majesty was pleased by his letters patent to grant unto the right honorable, the Lord Baltimore, a territory or tract of land therein nominated, and now known by the name of the province of Maryland, with divers franchises and immunities thereunto belonging, as in and by the said letters patent more at large appeareth; notwithstanding which said royal grant and publication thereof in this colony, divers persons, ill-affected to the government established by his majesty both here and in the said province, have, by pretence of a former commission, factiously combined to disturb the said Lord Baltimore in the possession of his said territory, as also to infringe the privilege of trade, in express terms solely granted to the said Lord Baltimore within the said province; and after many violent and disorderly courses the said pretenders have so far proceeded as to petition his majesty that part of said province now known by the name of the island of Kent & Palmer's island, with the trades thereof, might be confirmed to them, the consideration of which, their said petition, his majesty was pleased to refer to the most reverend and right honorable the archbishop of Canterbury, the lord keeper of the lord privy seal, and any others, the commissioners for plantations, who should be near at hand, and whom their lordships were pleased to call: whereupon, their lordships meeting, after a full hearing of both sides, the said pretenders' commissions being likewise read, their lordships did declare the right and title to the isle of Kent and other places in question, to be absolutely belonging to Lord Baltimore (and that no plantation or trade with the Indians ought to be within the

precinct of his patent without the license from him), as in and by the order of their lordships, more at large appeareth :

"These are, therefore, for the future preventing of further mischiefs and injuries, which may arise from ignorant mistakes of presumptions and pretences, as formerly, in his majesty's name, to prohibit all persons, being or inhabiting, or which shall hereafter be and inhabit within the government of this colony, by themselves or others, either directly or indirectly, from the date of these presents, to use, exercise or entertain any trade or commerce, for any kind of commodity whatsoever, with the Indians or savages inhabiting within the said province of Maryland, viz : northward from the river Wiconowe, commonly called by the name of Onancock, on the eastern side of the grand bay of Chesapeake, and northward from the river Chinquack, called Great Wicomico, on the western side of the said bay; and for the better regularity of all trades within the said colony, it is further hereby commanded that no persons shall resort unto the habitations of the aforesaid Indians without license first obtained for their so doing from the Lord Baltimore, or his substitute, upon forfeiture of the goods and vessels, or the full value of them, which shall be lawfully evicted to be traded or employed contrary to premises, with such further punishment by imprisonment of the parties or party offending against the true intent and meaning of the said proclamation, as shall be thought fit by the government and council.

"Given at James City the 4th of October, Anno Regin Regis Caroli decimo quarto, Anno Domini, 1638. God save the king.

"Vera copia.

"RICHARD KEMP, *Secretary.*"

The above proclamation was doubtless well known to every intelligent inhabitant of the Virginia colony at that day. The outlines of the Chesapeake bay and the rivers and islands as laid down on Smith's Map, had been made during his exploring expeditions in 1608, or from minutes and memoranda then made. His history and map were published in 1612 and in 1629, and being the only map then extant containing the names of places mentioned in Lord Baltimore's charter, was, doubtless, the guide of the king and Lord Baltimore in describing the boundaries of the province granted by the charter. Smith's Map was made under such circumstances, and on so small a scale, that no-

thing more than a general idea of the places described could be reasonably expected.

Bozman (whose history of Maryland was written about 1811) says: "It is wonderfully correct, considering the time and circumstances under which it was made; yet it is certain that by comparing it with the latest and best maps of the Chesapeake, particularly Griffith's Map of Maryland, we may perceive material errors, especially in those parts of it contiguous and adjacent to Watkins point."

A pamphlet had been published in London by Lord Baltimore, in 1635, entitled, "A Relation of Maryland; together with a Map of the Country, The Conditions of Plantations, and His Majesty's Charter to Lord Baltimore, translated into English." This pamphlet was evidently published to show the boundaries and location of the Maryland Province, and to induce immigrants to settle in it. The boundary line between Virginia and Maryland is dotted along the Southern shore of the Potomac river to its mouth, and down the bay shore to the place called Cingnack, and thence across the bay by a line (a little to the North of East) to the Southermost point of land washed by the waters of Chesapeake bay on the West and South, and by the waters of the Wighco, now Pocomoke river, on the East, and called Watkins point; and thence by an East line to the ocean. This East line is about on the 38th degree of North latitude, as laid down on this map; and on Smith's Map the 38th degree is placed still further South. These errors were common in the maps of that day. Lord Hardwicke remarked, in the case of Penn vs. Lord Baltimore, that "It is a fact that latitudes were then fixed much lower than they have been since found to be by more accurate observations.

But whatsoever errors were made in fixing the degrees of latitude on maps, the position of land marks and rivers was known and certain.

When, therefore, the proclamation forbids trade with the Indians or savages within the said province of Maryland, to wit, northward from the river Onancock, on the eastern side of the bay of Chesapeake, and of the Great Wighcomico, on the western side of the said bay, it indicates, at least, that those rivers were nearest to the boundaries called for in Lord Baltimore's charter, and for the purposes of the proclamation, were to be regarded as the Southern limits of Maryland. It may be fairly considered evidence that Watkins point, at that time extended so far South as to be West, or nearly West, of Onan-

cock river, so that an East line from it to the ocean would pass along or near that river. Neither of those rivers were located or named in either Smith's or Lord Baltimore's map. Cinquack was called for, in the charter, as the point from which the last line was to be run, to the beginning bounder at Watkins point; and the tradition is so fully proved that the main land originally extended in one unbroken point to Watts island, the southern end of which at that time was probably so nearly west of Onancock river as to confirm the implication that Watkins point was at the southern end of what has since become known as Watts island.

The tradition is that Fox island and Watts island were formed by the action of the waters of Chesapeake bay, breaking through the neck of land into Pocomoke bay. It was fully proved before the joint commissioners that great changes have taken place in those islands by the washing away which has occurred within the memory of many living witnesses, and that very many large stumps of trees are in the waters and marshes adjacent to them. This fact led Lieutenant Michler, in his report to the joint boundary commissioners, in 1858, to remark that "stumps of trees are said to exist in the marshes and in the waters between the main land and Watts island, showing that it probably was once one continuous neck of land as far south as that island."

Bozman makes this remark upon the proclamation, vol. ii, p. 73, note: "From these expressions in this proclamation it may be inferred that the thirty-eight degree of latitude was then deemed to cross the Eastern shore of Virginia as low down in Accomac county as Onancock creek, or, at least, that the Southern limits of Maryland extended that far South. As to the restrictions of the Virginians in their trade on the western side of the bay, within the Cinquack called Great Wicocomico river, it is not impossible that in consequence of the expression in the charter of Maryland as to the South bounds thereof ('following the Potomac on the West and South unto a certain place called Cingnack, situate near the mouth of the said river Potomac'), the Southern limits of that province, at least, as to the jurisdiction over the bay of Chesapeake, were deemed to extend to the mouth of the Cingnack. It is probable that most of the trade with the Indians was at that time carried on by water in different parts of the bay and its tributary streams." The proclamation was deemed to be of such importance that it was recorded among the proceedings of the governor and council of Maryland. So also was the adjudication

of the privy councils aforesaid dated 4th April, 1638. After the death of Charles I., Clayborne again threatened to attempt to take possession of Kent island by force, and an act of the Maryland assembly was passed in 1650 in reference to the said threats, in the preamble to which the order of the privy council of the 4th April, 1638, and the "proclamation made and published in Virginia the 4th of October, 1638, by the authority of the then governor there, with the advice and consent of the council of state," are specially recited. The next reference to the boundary of Maryland is found in a letter of instructions, dated 26th August, 1651, from Lord Baltimore to his governor, Wm. Stone. In this letter, Lord Baltimore refers to certain false rumors he had understood to be rife in the province "of a dissolution or resignation here of our patent and right to that province;" and that he had understood "that Sir William Berkeley had lately taken upon him to grant a commission to one Edmond Scarborough, of Accomac, Virginia, to seat Palmers island within our said province, and to trade with the Indians, &c," which was so strange a usurpation that he could not easily believe it to be true; but in case the said Scarborough, or any other, should presume to seat or trade in or through any part of his province without his authority, he required the governor to prevent him or them from so doing, and to seize upon his or their person boats and goods, &c. And after numerous other instructions upon a variety of subjects, he adds: "And for the better publication and remembrance of the bounds between Virginia and Maryland, and prevention of any controversies which may otherwise hereafter happen between the inhabitants of Virginia and those of our said province about the same, we require you, our said lieutenant, to encourage some English, as soon as you can, to take up such lands as shall be due unto them in our said province, near to the bounds of our said province, according to the maps thereof, which we sent thither about two years since, and to pass grants in our name, under our great seal, to such as shall desire the same, of so much land in those parts of our said province as shall be due unto them as aforesaid; especially on or near the bounds of our said province; on that tract of land which is commonly called the Eastern shore, lying between the bay of Chesapeake and the sea." Unfortunately those maps cannot be found. They were sent over (and probably made) some sixteen years after that of 1635, before mentioned. In another letter of instructions from Lord Baltimore to his governor and council, dated 23d October, 1656, among other items is

the following, to-wit: "That they do take special care that no encroachments be made by any upon any part of his lordship's said province; for the better prevention whereof, his lordship requires his said lieutenant and council to *cause the bounds thereof to be kept in memory and notoriously known; especially the bounds between Maryland and Virginia on that part of the country known there by the name of the Eastern shore*, to which his lordship would have them peruse one of the maps of Maryland, which his lordship formerly sent thither, whereby the said bounds are described; and his lordship hath also for their direction therein, sent herewith, a copy of a proclamation published heretofore by the then governor and council of Virginia for prohibiting any of Virginia to trade with the Indians in Maryland without his Lordship's lycense, which proclamation bore date 4th October, 1638, and therein are described the bounds between Maryland and Virginia; the said copye having bin transcribed out of another copie thereof, which his Lordship hath attested by Mr. Richard Kemp, deceased, who was secretary of Virginia when the said proclamation was made. Given under his lordship's seal at arms, 23d October, 1655.

"C. BALTIMORE."

Maryland Council Book, H. H. 1656 to 1668, p. 4.

It is thus shown, with certainty, that as late as 1656, Lord Baltimore, in an official paper, addressed to his governor and council in Maryland, charges them to guard, with special care, against encroachments upon any part of his province, and directs them to the proclamation of the 4th of October, 1638, as a public document, published by the government of Virginia, wherein are described the bounds between the two provinces.

Charles I. had described in the charter the line of division of the Eastern shore peninsula, specially reserving all that part of it South of the divisional line for himself, his heirs and successors. The governor and council who issued the proclamation were appointed by him, and were not likely to do any act to the prejudice of his rights. The council were especially known to be hostile to Lord Baltimore. For eleven years, during the king's life, and in the fulness of his power, the proclamation remained unquestioned.

After his death, and after the parliament took in hand the government of England, Claybornе and Bennet, influential Virginians, the special enemies of Lord Baltimore, together with Captain Curtis,

claiming to act under a commission from the council of state for the commonwealth of England, took possession of the government, both of Virginia and of Maryland, and had control over the latter from 29th March, 1652, for several succeeding years. If there had been error in describing the limits of Lord Baltimore's charter in the proclamation of 1638, these intelligent Virginians must have been aware of it; and especially Clayborne, who was not only a "person of quality and trust," as described by King Charles I., in the commission to him as secretary of Virginia, dated 4th March, 1625; but was unquestionably a man of intellectual ability, and residing in the colony, with fullest opportunities of perfect knowledge of all the affairs of the colony.

It is not likely with the power in his hands, with his known hostility to Lord Baltimore and his charter, that he would let slip an opportunity, to correct an error, if such was known or supposed to exist, in the proclamation, as to the bounds of the Maryland province, whilst their authority over Maryland existed. Special care was taken to have Clayborne's own claim to Kent and Palmers islands revived and recognized. His friend and colleague in governing Maryland, Richard Bennet, was one of the negotiators of a treaty with the Susquehanna Indians, on 5th July, 1652. The treaty recognized the rights of the English nation "to all the land north of the Patuxent and Choptank rivers, excepting the isle of Kent and Palmers island, which belongs to Captain Clayborne." Again, in November, 1652, when the government of Maryland, then acting under the authority of Clayborne and Bennet, directed an armed expedition to be fitted out against the Eastern shore Indians, the Southern bounds of Maryland are especially referred to in the order of appointing Captain Fuller to the command of the expedition. His commission was "to march against all or any Indians inhabiting upon the Eastern shore of the bay of Chesapeake, *to the northward of the southerly bound of this province, on that side of the bay, being over against Wicokomico point;* and from thence in a direct line eastward to the main ocean."

Wicokomico point, here mentioned, was doubtless the point projecting into the bay from the north shore of the Great Wicokomico river, on the Western shore near "the place called Cinquack"—the words "over against" meaning "opposite to." This point, although not named, is distinctly laid down on the map in the "Relation of Maryland," and the line dotted; thence to Watkin's point; thence to the ocean, is nearly an East line. We think there can be no doubt

that the Pocomoke river was originally called by the Indians Wighcocomico, which Smith abbreviated on his map to Wighco. Smith and his associates explored the river, and had intercourse with the natives residing upon it. Smith's general summary of his voyages up the bay was evidently written some time after they had been completed. Whereas the two accounts written by his associates are more in the form of a diary, at least following a consecutive form, giving the events in the order of their occurrence, as if written during the voyage. Dr. Russel, Todkill and Mumford call the river Wighcocomico in three places on one page. (Smith's History, vol. i, page 175.)

After two days more, spent among uninhabited isles, after leaving the river Wighcocomico, going north, "they came to the river Cuskaramark," admitted to be the Nanticoke. Smith, (reversing the actual order of his expedition, as if he had gone up the Western shore and returned by the Eastern shore,) after describing the bay, describes the rivers of the Western shore, as far as he explored them, to the head of the bay. He then mentions, on the East side of the bay, the river Tockwongh, (the present Sassafras,) the Rappahannock, (probably now Fishing bay, in Dorchester county,) "near to which," he says, "is the river Kuscaramaock." "After that is the river Wighcocomico." "The people of those rivers are of little stature, and of another language from the rest, and very rude. But they on the river Acoahanock and they of the Accomack doth equal any of the territories of Powhattan, and speak his language, who over all those doth rule as king." Dr. Russell and the others, state that "this river, (the Cuscarawack,) but only at the entrance, is very narrow, and the people of small stature as those of Wighcocomoco;" evidently meaning the Wighcocomoco which they had explored as high as the cross on the map, and of which they had given a particular account.

There is not the slightest intimation in Smith's History or Map that he ever saw or heard of any other Wighcocomoco river on the Eastern shore of the bay. Smith, in describing the rivers of the Western shore, begins with the Powhattan, (the James river,) then describes the Pawunkee and Tappahanock, and says "the fourth river is called the Potomake, six or seven miles in breadth."

First on the south side, at the very entrance, is "Wighcocomico." (Smith's History, vol. i, p. 118.) Afterwards, on the 120 page, describing the rivers on the East side of the bay, coming South, he says: "After that (the Kuscarawaok) is the river Tants Wighcocomico;" evidently meaning the Wighcocomico, described by Dr. Russell and

Co., and called by Smith Tants Wighcocomico to distinguish it from the other Wighcocomico on the Western shore "at the very entrace of the Patowmaock;" which latter Wighcocomico is not mentioned at all in the account written of Dr. Russell and Co. We cannot therefore see, if Smith's History had been carefully examined, how any question could have arisen about the identity of the river Wighco, mentioned in the Lord Baltimore's charter, with the river since known as the Pocomoke. Some question, however, in relation to the bounds between Maryland and Virginia, (but what it was does not appear,) seems to have assumed importance during the time Bennet and Clayborne ruled over Maryland. Cromwell was said to have written some letters to Bennet and Clayborne, in January, 1655, upon this subject. But all we know of their contents is the explanation of their purport, given by Cromwell, in a letter to the same persons, as commissioners of Maryland, dated 26th September, 1655. In this letter he says, "our intention was only to prevent or forbid any force or violence to be offered by either of the plantations of Virginia or Maryland, from one to the other, upon the differences concerning their bounds—the said differences then being under the consideration of ourself and council here." "The differences," whatever they were, remained undetermined by Cromwell and his council at the time of his death. The persistent efforts of Clayborne and Bennet, during their reign over Maryland, having failed to induce parliament or Cromwell to interfere with Lord Baltimore's proprietary rights, the government of his province was finally restored to him in March, 1657–'8.

Up to this time no settlements upon the Eastern shore, within the limits of Maryland, below Choptank river, had been made under grants of land by Lord Baltimore, so far as we have been able to ascertain.

The settlements on the eastern shore of Virginia had extended northward from the first plantations. A letter from Colonel Edmond Scarborough to the governor and secretary of Maryland, in relation to a war he was about to prosecute against the Asssatege Indians, bears date, "From Onancock, 28th August, 1659;" and that place was probably then his residence. Early in the session of the Virginia assembly of 1660, they passed a stern law against the Quakers, forbidding their being brought into the colony; requiring all Quakers, on detection, to be imprisoned without bail, till they took an oath to leave the country, and gave security that they would never return, with other most stringent provisions. (I. Howison's History of Vir-

ginia, 319.) This act doubtless enabled the governor of the Maryland province to comply with Lord Baltimore's orders of 1651 and 1656, to people that part of his territory on the Eastern shore next adjoining to Virginia.

A commission issued by Gov. Philip Calvert, dated on the 6th of November, 1661, to Col. Edmund Scarborough, Randall Revell and John Elzey, authorizing them, or any two of them, for the term of six months, to grant warrants for land upon the Eastern shore of this province, in any part below Chaptank river, upon the conditions therein described, recites that it was issued upon "the petitions of divers persons well affected to this province now, or late inhabitants of Northton county, otherwise called Accomack, in Virginia, who are desirous to transplant themselves and families into this province." Scarborough, Elzey and Revell were residents of the Eastern shore of Virginia, and were empowered to grant warrants for fifty acres of land for every person transplanted, on condition that before warrant granted each person should take the oath of fidelity to Lord Baltimore before two of the commissioners being in Maryland. Randall Revell and John Elzey themselves settled at Manoakin, and on the 2d of May, 1662, Randell Revell reported to the governor that there were then "seated 50 titheable persons at Manoakin and Annamesses," and desired that "course might be taken for the supply of the plantation or continuance of the commission to himself and the others." On the same day it was ordered, "that the commission for granting warrants for land, dated 6th November last, be renewed to Col. Edmund Scarborough, Randall Revell and John Elzey, to continue until recalled." This commission seems to have been continued until 4th February, 1663, on which day a commission, in similar terms, was issued by Governor Charles Calvert to John Elzey, Randall Revell and Stephen Horsey. Scarborough was thus left out of the commission, but that he had accepted the trust and acted under it appears from a reference to him in a document dated June 3d, 1664, issued by Governor Charles Calvert, appointing Philip Calvert to deliver a copy of it to Governor Berkley, of Virginia, &c. This document had special reference to the claim then recently set up by Virginia to the territory settled at Manoakin and Annamessex, and to Col. Scarborough's armed invasion of that part of Maryland in October 1663. This document states that Col. Scarborough "did, about the tenth day of October last, in a hostile manner, enter many miles into this province, to the terror of the people at Manoakin and Annamessex, beating, abusing and imprison-

ing *the people there by him long before seated by virtue of a commission from this government directed, and contrary to his certain knowledge of the bounds of the said province.*" That most extraordinary claim seems to have originated with Col. Scarborough. The first notice of it to the Maryland authorities appears in a letter from Mr. John Elzey, dated "Manoakin, this —th March, 1662," (but actually 1663 N. S.), to Mr. Serrell, secretary of Maryland. As this document shows the origin of the controversy as to the true location of Watkins' Point, and the action of the Maryland authorities upon the first notice of it, we copy the proceedings as they appear in the Maryland records. Liber H. H., folio 170.

H. H. 170.

"At a Council held at St. John's, 8th April, 1663, was read a letter from Mr. John Elzey to Mr. Small, secretary:

"Honorable Sirs:

"By the last opportunity of conveyance, which was by John Anderson, we gave your honors account of what Col. Scarburgh writ to Mr. Revell as concerning their claim to this place, and have ever since expected some instructions from the hon'ble lieut. gen'l how we should answer him if he should come up. But as yet can hear none. Since the time of writing my business drew me down to Accomack, where Col. Scarborough arrested me at his majesty's suit, and made his demand of obedience and rights for land, the copie whereof I have enclosed, and the copie of my answer to it, without which I could not have done my business nor have returned home before I had been at Jamestown, where I do believe it would have been exacted more particularly, Col. Scarborough telling me that my answer was like to that of the oracle of Delphos. When he had my response, he told me that if he could he would be up with us before Jamestown court, if not, presently after, and make the same demand of every particular person, and on denial would, according to his order, set the broad arrow on the house of him that should refuse to give a satisfactory answer, and promises great protection on submission.

"Now I beseech your honors that you will, with what speed you can, urge his lieut. to consider our condition; how we lie between Sylla and Charibdis, not knowing how to get out of this labyrinth.

I could not understand but that he doth intend to come up with a competent company to force us, who are not in a capacity to defend ourselves against the pagans, who doe grow very insolent, and tell us we are lyars, and that our great men care not for us, because that none of them come to us.

"I would gladly have waited on your honors, but cannot at present by reason of an extreme cold that hath seized on me. But because I would not have these miscarry, I have sent my friend, by whom I shall expect your answer, to the satisfaction of all the inhabitants, who do much desire to serve his lordship faithfully, and live quietly under his protection and government to enjoy what little goods they have in peace, and not have it macerated and torn from them because they are ignorant. Thus hoping you will think of us and provide for our safety that cannot help ourselves, I shall omit at present what further discourse I have heard until it shall please God that I shall see you and rest.

Your honours' ever faithful and ready servant,

JOHN ELZEY.

Maurakin this —th.

March 1662. (N. S. 1663, mark the same distinction in following dates.

I. D. JONES.)

Col. Scarborough's Demand.

"Mr. John Elzey:

"This day as I am his majesty's treasurer and substitute, I do demand of you obedience and acknowledgment to his majestie's dues in poynt of rights for lands and government, which, though hitherto upon some reasonable pretence, you have declined. I have, upon better information, and doe by these presents, demand your immediate obedience to his sacred majesty in payment of right for land and gov'nt to which your answer and submission is required by me, his majesties officer, this 23rd of February, 1662.

"E. S.

"Upon some delays and scruples made by Mr. John Elzey, I demand right of land in and upon the place where he lyreth, and sub-

mission to his majestie's government, being in a place now called Manrakin, formerly in Smith's Map, Wicomoco river.

"E. S."

Mr. Elzey's Answer.

"Mr. Scarborough :

"Honored Sir : Having perused your demand of obedience and acknowledgement to his majestie's dues in poynt of rights for government, I can give no other response than this. That I shall decline, as long as I live, all authority that shall not be derived from him, his heirs, or lawful successors, and am, and shall always be ready, to yield obedience to them, that is or shall be the gov'nt by an authority granted from him, or any of his lawful successors, and will willingly pay all such rights and dues as shall be lawfully demanded of me, whether of right of land, or otherwise ; and soe shall I subscribe this 23rd of February, 1662.

"J. E."

Upon reading of this letter it is ordered :

"That a letter bee sent to Sir Wm. Berkley, governor of Virginia, from the governor and council, signifying unto him Col. Scarborough's demand of obedience and acknowledgement to his majestie in poynt of rights of land, from the people inhabiting at Manoakin and Annamessex, as well as submission to his majestie's government of Virginia. And that on their part, they would appoynt a time, when we on our part, shall attend on them to determine that place which shall be accounted Watkins point, according to his lordship's patent for Maryland."

The next historical document in the Md. Records, relating to this "difference" about "Watkins point," is the following, under date June 3rd, 1664 :

"Charles Calvert, Esq., Lieut. and Chief Governor of the Province of Maryland, under the Right Hon'ble Cecelius, Lord and Proprietary of the same : To all persons to whom these presents shall come, greeting :

"Whereas, divers persons, illwillers to the good correspondence of long time held between the Gov'm'nt of Virginia and that of this province, have of late endeavored to raise differences between the said governments, touching the ancient and known bounds between them

on the Eastern shore ; and whereas the Honorable Sir Wm. Berkley, gov. of Virginia, did appoint Col. Edmond Scarborough, Mr. John Cattlett and Mr. Richard Lawrence, or any two of them, whereof the said Scarborough to be one, to give a meeting to the deputies or substitutes of this government, by the governor thereof to be appointed, (in case any dispute should arise where Watkins point was, that being the bound of this province,) to determine what should be reasonably proposed by the said Deputies. In pursuance whereof, the said Col. Scarborough, without the said Cattlett or Lawrence, or convenient notice given to me, did, about the tenth day of October last, in a hostile manner, enter many miles into this province, to the terror of the people at Manrakin and Annamessick, beating, abusing and imprisoning the people there, by him long before seated by virtue of a commission from the government, and contrary to his certain knowledge of the bounds of the said province. And whereupon, remonstrance of this undue proceeding to the Honorable Sir Wm. Berkley, by myself in person, he did not only disclaim any order from him to the said Scarborough alone, or before notice given and debate had, touching the point in difference, to proceed by force as he did, but was pleased further by his order of the 28th of March last, to order the said Scarborough, with one or both the surveyors, Cattlett or Lawrence aforesaid, Capt. Joseph Bridger, Capt. Robt. Elkson and Mr. Bulwer Mitford, to give a meeting to such commissioners, as should by me be appointed at Manrakin 10th May last, and in case of my refusal of that so just a proposal, to proceed according as in that commission they were ordered. Now know ye, that for as much as neither the said John Cattlett, nor Richard Lawrence, appeared at Manrakin at the time appointed, without one of which nothing could be legally by the rest done that did appear ; and to show how we are not to be tired out of our desires of fair correspondence with the hon'ble gov. and council of Virginia, I have constituted, ordained, appointed and impowered Philip Calvert, Esq., deputy lieutenant and chancellor of this province, to repair to the Hon. Sir Wm. Berkley, gov. of Virginia, and the council there, and after delivering of a duplicate of these presents, and to treat and determine the said difference concerning Watkins point ; also to demand justice against the said Edmond Scarborough for entering into this province, in a hostile manner, in October last, and by blows and imprisonment outraging the inhabitants of Manrakin and Annamessex, without commission, as also for attempting to mark a tree upon a point of land above

thirty miles to the Northward of Watkins point, in Maryland, without commission or order, and for publishing a proclamation at Manrakin, on Monday, 16th May, contrary to the order dated 28th of March aforesaid, I having appointed commissioner the said Philip Calvert, and Jerome White, surveyor general, to meet at Manraken aforesaid, who did accordingly come at the time and place appointed, which, unless I had refused to do, they, the said commissioners, had no order to publish any command or proclamation whatsoever, had they been present, (according to the tenor of the same order,) as they were not. And further, to represent to Honorable Sir Wm. Berkley the undue proceedings of the assembly of Virginia, who undertake to take cognizance of things relating to this province and the people thereof. Whereas his majesty of happy memory by the charter, hath, by express words, exempted both the province and people thereof from the government of Virginia, and made both it and them dependent only of the crowne of England ; and to desire of him, the said Sir Wm. Berkley, to take care for the future that the assembly, meddling with things relating to us, and beyond their power, be no cause of future difference between us ; which we, in our assembly, on our part, shall industriously avoid. Whereof I desire that the said Philip Calvert may be credited and believed, promising to ratify and confirm whatsoever shall be done by him, according to this my commission, as if it were done by myself. Given at St. Maries, under my hand, and the lesser seal of this province of Maryland, this 3rd day of June, 1664."

We learn from this document the only connected account of the proceedings of the governor and council of the two colonies, subsequent to that order of the 8th of April, 1663. It appears from this document, that in response to the representations made to Gov. Berkley, under the order of April 8th, 1663, he appointed Col. Scarborough, Mr. Cattlett and Mr. Lawrence, or any two of them, whereof Col. Scarborough to be one, to give a meeting to the deputies or substitutes of Maryland, in case any disputes should arise where Watkins' point was, that being the bounds of this province. That Scarborough, without Cattlett or Lawrence, or notice to the governor of Maryland, invaded Maryland in a hostile manner about the 10th October, 1663. That remonstrance against "this undue proceeding" was made to Gov. Berkley by Gov. Calvert in person. That Gov. Berkley not only disclaimed any order from him to Scarborough alone,

or before notice and debate had been touching the point in difference, but by order of 28th March, 1664, directed Scarborough, with one or both the surveyors, (Cattlett and Lawrence,) Capt. Bridger, and the others named, to give a meeting to the Maryland commissioners on 10th May, 1664. That neither of the surveyors, Cattlett or Lawrence, appeared at the time appointed, although Philip Calvert and Jerome White, commissioners appointed by the governor of Maryland, met at the appointed time at Manrakin; but that Scarborough was there in May, 1664, and attempted to mark a tree upon a point of land above 30 miles North of Watkins point, and on 16th May, 1664, published at Manrakin, a proclamation contrary to his orders. That by document of June 3rd, 1664, Philip Calvert was commissioned to repair to the governor and council of Virginia to deliver a duplicate of the paper, and "to treat and determine the said differences concerning Watkins point;" also to demand justice against the said Scarborough for invading this province with force of arms, outraging the inhabitants of Manrakin and Annamessick, and for his other acts complained of. And further to represent to Gov. Berkley, of Virginia, the undue proceedings of the assembly of Virginia, who had undertaken to take cognizance of things relating to this province, contrary to the express words of Lord Baltimore's charter."

The undue proceedings of the Virginia assembly here referred to, were doubtless the act of the 2nd September, 1663, entitled, "An Act concerning the bounds of this Colony on the Eastern shore."

By this act the assembly "concluded the same place of Watkins Point to be the North side of Wicocomico river on the Eastern shore, near unto, and on the South side of the straight "Limbo," opposite Patuxent, which place, according to Capt. John Smith, in the year 1608, was so named. The point here described has always been known and called Nanticoke point. It is highly probable that the assembly, as well as the "five able selected surveyors and two burgesses," on whose report the assembly based their action, was mainly, if not entirely, influenced by the opinion and representations of Col. Scarborough. He had been for many years a resident of the Eastern shore, and member of the house of burgesses, and was surveyor general of Virginia. He had commanded the Virginian forces on the Eastern shore in the wars against the Indians, and, doubtless, had travelled the country, and was better acquainted with the territory than any other person in the two colonies. But he had evidently read Smith's History and Map to little purpose, and had jumped to his

conclusions with reckless audacity. This is shown by his demand upon Mr. Elzey, on the ground that the place of his residence, at Manrakin, was formerly in Smith's Map called Wicocomico river.

We think we have already shown that a careful examination and comparison of Smith's History and Map, together, will leave no doubt that the only Wighco (or Wighcocomico river as it is called in the history) on the Eastern shore, mentioned by Smith, or of which he had any knowledge, is the present Pocomoke.

On the map, Smith has located the Indian king's house "Wighcocomico," on or near the South bank of the Wighco, and he has located no river between the Wighco and Cucarawack, (the Nantikoke,) although Little and Great Annamessick, Mannakin and Wicomico rivers intervened between them. In the same way he passed by, without discovering, the rivers Chester, Wye, St. Michaels, Great and Little Choptank, and the Black Water and Tansquaking rivers, between the Tockmough (the Sassafras) and the Nanticoke.

The error of the Virginia assembly, apart from its total want of jurisdiction over the question, is still more remarkable. We presume it originated in misapprehending a line on 183d page of i. vol. Smith's History, viz: "Watkins, Reads and Munfords poynts, are on each side of Limbo." But this gives no certain idea of the location of any one of them. A glance at Smith's Map, however, shows that Mumfords point was North of Limbo, and must have been at the Southern end of Hoopers island, (though not known to Smith to be an island,) and that Watkins point was 30 miles South of Limbo, and was the North point at the mouth of the Wighco flumen, as located on Smith's Map, while Reads point was further up, and on the same side of the Wighcocomoco river, probably at the point now known as Williams point, below Shelltown. The claims founded on these errors were subsequently abandoned. Meantime the Maryland authorities continued to claim to Watkins point, as described in the charter, in every document which related to the bounds of the province on the Eastern shore. Thus, in a commission from Governor Calvert, dated 26th March, 1664, to Wm. Coleburn to be lieutenant under Capt. Thorne of the foot company to be raised by him, "between Choptank river and a line drawn East into the mayne ocean from Watkins point, *being the North point of the bay into which the river Wighco, formerly called Wighcocomico, afterwards Pocomoke, and now Wighcocomico again, doth fall exclusively.*" Again, in a commission, dated 26th May, 1664, to Stephen Horsey, Capt. Wm. Thorne, and Wm.

Bozman, to grant lands upon the Eastern shore of this province, in any place between Choptank river and a line drawn East into the main ocean from Watkins point, "*being the North point of the bay into which the river Wigheo* (formerly called Wighcocomico, afterwards Pocomoke, and now Wighcocomoco again) *doth fall exclusively.*" Liber H. H., folio 197, 198.

Again, in a commission dated September 2d, 1665, to Capt. Wm. Thorne, to command as captain all the forces "on the Eastern shore of the province, from Wicocomoco that joynes upon Maniy" (meaning Monie bay, into which it flows), "to that part of Pocomoke on the said Eastern shore that is or shall be inhabited within the province." A distinction here is clearly drawn between the river now called Wiconoico (then Wicocomico), emptying into Monie bay, and the Pocomoke or Wighcocomoco of Smith, which fell into the Chesapeake bay at Watkins point. And again in the letters patent of Cecelius, Lord Baltimore, erecting the county of Somerset, dated 22d August, 1666, he describes the bounds thus: "All that tract of land within our province of Maryland, bounded on the South with a line drawn from Watkins point, being the North point of the bay, into which the river Wigheo (formerly Wighcocomico and afterwards Pocomoke and now Wighcocomico again) doth fall exclusively to the ocean on the East, Nanticoke river on the North, and the sound of the Chesapeake bay on the West. H. H., folio 268. Recorded in full in the records of Somerset county in Liber B.

In the division of the county into hundreds, January, 1667, Annemessex hundred is thus described: "Beginning at Watkins point, running to the mouth of Merumisco creek up the Westermost side of the said creek to Merumsco dams, and from Watkins point to the North point of Annemessex river," &c.

The particularity in the description of the location of Watkins point in all the official documents of Maryland, in which it was named, after February, 1663, was doubtless caused by the attempt of Col. Scarborough at that time to create a doubt as to its true location. This was also the reason for calling the Pocomoke "Wighcocomoco *again.*"

That this was the true original location, and that Watkins point originally extended so far South as to be west of Onancock river, and that the proclamation of 4th October, 1638, was recognized by the people of both colonies as correctly describing the bounds of Maryland down to 1663, we think, may be fairly inferred from a passage in

Col. Scarborough's account of his military expedition to Annamessex and Manrakin in October of that year. It was addressed to the governor and council of Virginia. Describing his interview with the settlers at Manrakin, Col. Scarborough says:

"Some of them also discoursed of the lord lieut. of Maryland's claim to Manrakin and all other places to Anancock, to which it was answered that, *whilst the erroneous proclamation was uncontrolled, that declares Anancock to be Maryland's Southern bounds, it might be so received, but since occasion made the government of Virginia not only reverse that proclamation, but also by this present act of assembly, ye certain bounds of Lord Baltimore's patent was declared,* and if the lieutenant had aught to say, he was referred by the act to persons and place. Therefore they need not trouble themselves therein, for the question appertained to higher powers, and above private mens' controverting, at which they were well satisfied, and desired protection of their persons and estates from any pretenders under the said lord, which, being assured them, they departed well satisfied." It would appear from Col. Scarborough's account that he deemed it nothing short of rebellion in Lord Baltimore's officers, and the people of Annamessick, to question the authority of an act of the "grand assembly" of Virginia "not only to reverse that proclamation," but also to declare "the certain bounds of Lord Baltimore's patent."

The two depositions made on the 19th July, 1664, in the court of Northton, as to the location of Pocomoke river and Watkins point, a copy of which was submitted to us by the Virginia commissioners, have received respectful attention. That of Capt. Wm. Jones states that thirty-five or thirty-six years before that date he often sailed a trading with the Indians in the Chesapeake bay, and well knew the river of Pocomoke, "which lyeth to the Southward of a little point described in Capt. Smith's Map without a name, and is so far Southward as a man can see from the place described in Capt. Smith's Map for Watkins point, and that the said river Pocomoke was then so called, and no such name as the river Wighco, either at that time or in the memory of man before, was applied to the river Pocomoke, and that ever since the said river has been and is called by the name of Pocomoke river."

The other is the deposition of Edmund Scarborough, and the same Capt. "Will. Jones" and six others, who state that they "have of long time heard of and known the river Pocomoke, and that the said river hath been so called time out of mind, both by the report of the

Indians and knowledge of the subscribers, and to this day is so called, being a river on the Eastern shore of Chesapeake bay, in Virginia, lying to the Southward of a small spiral point on the south side of Annamessick, and that point is to the Southward of the place described in Capt. Smith's Map 'for Watkins point,' so far as a man can see in a clear day, and that the said river of Pocomoke, and so situate as aforesaid, is so called to this day."

We understand the first deposition to state, in substance, that the deponent knew the Pocomoke river about 1627 or 1628; that it (the river) is so far southward of a little point on Capt. Smith's Map without a name, as a man can see from the place described for Watkins point in Smith's Map, and that no such name as the Wighco, either then or in the memory of man before, was applied to the river Pokomoke. Capt. Jones, of course, could only testify to what he had heard or known. His knowledge began some twenty years after Capt. Smith's exploration; and against Capt. Jones' statement that the river never was called Wighco in the memory of man, are the history and map of Capt. Smith, published first in 1612 and again in 1629, calling that river "Wighco flu" (flumen), although Capt. Jones and the other deponents had never *heard* it so called, but only had *heard* it called Pocomoke in their day.

The second deposition, as written, does not seem reconcilable with the first. The first describes the location of the *Pocomoke* as so far South of a small point without a name in Smith's Map as a man can see from Watkins point. In other words, that the small point was so far *North* of the river Pocomoke as a man could see from Watkins point. The second deposition states that the river Pocomoke lies to the Southward of a small spiral point on the South side of Annamessick, and *that point* is to the *southward* of the place described in Smith's Map for Watkins point.

If both depositions refer to the same point "without a name" in Smith's Map, and that point was on the South side of Annamessick river, it certainly must have been North of Watkins point, as located on Smith's Map.

We think the depositions utterly fail to rebut the evidence herein adduced as to the identity of the Wighco and Pocomoke, and the true location of Watkins point. And we conclude, with Bozman, that "Watkins point must have been the Southern promontory of Somerset county, on the bay, and what may be termed the exterior cape of Pocomoke bay." Bozman's Maryland, 132.

And we are further of opinion that that Southern promontory was subsequently to the charter broken by the action of the water into the islands since called Foxs islands and Watts islands; and that "the most Southern promontory, or exterior cape of Pocomoke bay," since called Watts island, was formerly *Watkins point*, described in Lord Baltimore's charter.

Where the point of land at the Southern end of the promontory actually extended at the date of the charter, two hundred and thirty years ago, can only now be ascertained with probable certainty. From the shape of the shoal South of Watts island, as shown by the United States coast survey, the extent of the washing away may be inferred; but we submit that the Virginia proclamation of 1638 furnishes, by implication, the most certain evidence of its former true location. An East line to the ocean from that point was Maryland's true Southern boundary on the Eastern shore.

We proceed now to consider

"*The Calvert-Scarborough line.*"

We have found no other reference in the Maryland records to the disputed Southern boundary on the Eastern shore, after Governor Charles Calvert's letter or commission to Philip Calvert of the 3d of June, 1664, except what has already been stated.

The next entry on the Maryland records relating to this subject is entitled:

"A list of lands surveyed and entered in the office of Virginia, and patented, that now fall in Maryland."

		Acres.
Robert Hinston,		500
John Williams,		400
James Henderson,	These have their patents.	
Thomas Davis,		
John Davis,		

	Acres.	
Pte. of Edmond Scarborough, - -	3,000	Patented.
Capt. Bowman and Mr. Littleton, -	3,000	Past the office.
Lt. Col. Waters and Mr. Robins, -	4,000	Past the office.
Thos. Burnell, - - -	550	Past the office.

Edward Smaller,	500	Patented.
Daniel Selby,	600	Patented.
John Pike,	400	Patented.
Robinson's children, Thomas Richard,	1,050	Past the office.
John Paramore,	1,500	Patented.
Robert Johnson,	600	Patented.
Stephen Barnes,	600	Patented.
William Brittingham,	700	Past the office.
Thomas Smith,	400	Past.
Henry Bishop,	2,300	Past.
Thomas Selby,	1,250	Past.
Alexander Williams,	600	Past.
Robt. Richardson,	2,000	Past.
Edward Smith,	700	Past.
Richard Smith,	200	Past.
Frances Benston's, formerly John Wallop's	To produce.	
Edmond Scarborough,	3,000	

"Whereas the lands belonging to the persons above mentioned are found, since the lines are laid out on the Eastern shore, in Somerset county, to be within this province of Maryland, I do hereby promise to ratify and confirm, by virtue of his lordship's instructions, to me directed, every of the said lands, by patent or grant, under the great seal of this province, to each respective person, when demanded within seven years' time, allowed each person for the making good their rights for every of the said lands so by them first surveyed on Virginia part and now to be holden by his lordship's grant, within this province, at 50 acres, for every right of land, so by them to be made good according to his lordship's conditions of plantations.

"Given under my hand this 11th day of June, 1668.

"CHARLES CALVERT."

From extracts taken from the books of Virginia lands patents in possession of the Virginia boundary commissioners at the joint meeting at Crisfield, those lands appear to have been patented mostly in 1664, 1665 and 1666. These extracts enable us to supply the numbe

of acres left blank in the "list," viz.: James Henderson, 400 acres; Thos. Davis, 400; John Davis, 700—all patented April, 1666. John Wallop, 400 acres on Pocomoke river, and 3,050 acres at Gingoteague, 10th June, 1664; which, added to the above number of acres in the "list," make nearly 33,000 acres taken up by Colonel Scarborough and his friends within the limits of Maryland, according to the lines of 1668—pending the controversy as to the true location of Watkins point. It will be found on examining the Virginia records that all these lands were situated between the southeast bank of the Pocomoke river and the ocean, in what is now Worcester county, Maryland.

The following is a copy of the two agreements between Calvert and Scarborough of June 25th, 1668, as contained in the Maryland council book, 1669 to 1673, viz.:

"Articles of agreement between Philip Calvert, Esq., chancellor of Maryland, deputed by the honorable the governor of the said province, to treat and conclue upon the bounds of the said province, and Colonel Edmond Scarborough, his majesty, surveyor-general of Virginia, authorized and commanded to lay out the bounds of Virginia."

I. Imprimis. It is agreed that all persons who have surveyed or patented and seated land on the seaboard side in the right of Virginia and now fallen within the divisional line, shall enjoy their said lands, they taking a patent from the lord proprietary of Maryland, and within seven years entering rights in the said province, and paying the half fees to the surveyor-general and full fees to the secretary and chancellor.

II. Item. All such as have already patented any lands in right of Virginia in any other place within the line aforesaid, which is not also patented in Maryland, shall have the privilege in the foregoing articles upon such terms as in the said article is expressed.

III. Item. All such who have patented and seated lands in right of Virginia, which do fall within the line aforesaid, and are patented likewise in Maryland, but not seated in the same right, shall enjoy the same, unless it can be proved they have seated said lands in defiance and despite of the said government after warning given, provided they take patents, enter rights, and pay *fees* as in the first articles is agreed.

IV. Item. If any land shall chance to be patented only in right of Virginia, for which there is also a patent in Maryland, the patent

in Maryland shall carry the land. In witness whereof the said Philip Calvert and Edmond Scarborough have hereunto set their hands, the 25th day of June, 1668.

(Signed) PHILIP CALVERT.
EDMOND SCARBOROUGH.

"Whereas his royal majestie's commission to the surveyor general of Virginia commaands setting out the bounds of Virginia, with a reference to his majestie's hon'ble governor and council of Virginia, from time to time to give advice and order for directing the said surveyor general to do his duty appertaining to his office. In order thereunto his majesty's hon'ble governor and council have by letter moved the hon'ble, the Lord Baltimore's lieut. gen'l of Maryland, to appoint some fitting person to meet upon the place called Watkins point, with the surveyor general of Virginia, and thence to run the divisional line to the ocean, sea, &c.

"The Hon'ble Philip Calvert, Esq., Chancellor of Maryland, being fully empowered by the hon. lieut. general of Maryland, and Edmund Scarborough, his majesty's surveyor general of Virginia, after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and the South side of Annamessex bay, have and do conclude the same to be Watkins point, from which said point, so called, we have ran an East line agreeable with the extremest part of the Westermost angle of said Watkins point over Pocomoke river to the land near Rob't Holston's, and there have marked certain trees, which are so continued by an East line running over Swarsecutt's creek into the marsh of the seaside, with apparent marks and boundaries, which by our mutual agreement, according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay.

"In confirmation of which concurrence have set our hands and seals, this 25th day of June, 1668.

(Signed) PHILIP CALVERT. [Seal.]
EDMUND SCARBOROUGH. [Seal.]"

This is the only record of the transactions found in the Maryland archives. No journal of proceedings, no map or plat, no notes or certificate of survey, no mention of the names of the surveyors employed in running the line, can be found in our records

Sixty years had elapsed since Capt. Smith and his crew named Watkins point, and thirty-six years since Charles I. had adopted that point as the spot from which the divisional line on the Eastern shore between Virginia and Maryland should be run to the ocean.

A controversy had for several years existed as to the true location of this point. The surveyor general of Virginia and the chancellor of Maryland were empowered to meet upon the place and thence to run an East line to the ocean. They concluded that "the point of land made by the North side of Pocomoke bay and the South side of Annamessick bay was Watkins point." If Lieut. Michler was correct in 1858 in assuming that "the mouth of the big Annamessick river" "may once have given rise to the name Annamessick bay," mentioned in the Calvert and Scarborough agreement, and our conclusion is correct that in 1668 the neck of land since broken up into Foxs and Watts islands extended unbroken to a point West or nearly West of Onancock river, then "the place called Watkins point" must have extended nearly twenty miles from North to South. Michler would hardly have come to such conclusion but that the prolongation Westward of the Calvert-Scarborough line from Pocomoke river to Tangier sound reached the sound after crossing little Annemessex river and North of the mouth of that river. He would scarcely have supposed that a point made by the North side of the Pocomoke bay would have extended beyond the mouth of the next river to the mouth of Pocomoke, especially as he, by a mistake, supposes the neck of land known as "little Annamessex" to extend to the big Annamessex river. It is well known that "little Annamessex neck" extends only from the Southeast shore of little Annamessex river to Cedar straits, and along the North shore of Pocomoke bay to East creek, and that the neck of land between little and big Annamessex is known as "Annamessex neck." If Watkins point was formed by Pocomoke bay on the South and East, and Tangier sound on the West, no geographical definition of a "promontory" would carry its Northern limits beyond the mouth of little Annamessick river. The words "promontory," "headland," "place," and "point," which are all used in the charter to indicate the spot or point of departure of the divisional line to the ocean, are commonly understood to describe a tract of land extending out into a bay or river beyond the line of the shore and becoming narrow at the end, which is therefore usually called "the point," and is always understood to mean "the extremest point" of the "angle," where the word "point" is used to indicate

boundary. Thus, when the bounds of St. Mary's county were particularly prescribed by the act of 1695, ch. 13, confirmed and made perpetual by ch. 92 of 1704, it was declared "that St. Mary's county shall begin at Point Lookout and extend up Potomac river," &c., who would suppose that by "Point Lookout" in these acts was meant "the point of land made by the North side of" Potomac river and the "South side" of Patuxent river?—a tract of land which includes seven or eight other distinct points. So also in the letters patent of 1666 erecting Somerset county "bounded on the South within a line drawn *east from Watkins point*, being the North point of the bay," &c., and in describing the bounds of Somerset and erecting Worcester county by the act of 1742, ch. 19, "beginning at *Watkins point*, and *thence* running up Pocomoke bay," &c. It would seem impossible to doubt that in all these descriptions the end of the point where it was washed by the water into which it extended was meant as the point of departure. But the Calvert-Scarborough agreement concluded otherwise.

"After a full and perfect *view* taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay, have and do conclude the same to be Watkins point." It is not stated that any other evidence, traditionary, or otherwise, had aided their *view* or conclusion. A point of land of such extent from North to South must have some limits from East to West. These are not expressly given, but evidently must have been, Tangier sound on the West and Pocomoke river on the east; a distance of about 15 miles apart.

Their commission, "to meet upon the place called Watkins point," of course empowered them to determine what and where was the "place." This they did, as their report certifies. Their next duty was "thence to run the divisional line to the ocean, sea, &c." This also they certify they did, to wit, "*from which said point*, so called," (that is *from* the point of land made by the North side of Pocomoke bay and South side of Annamessex bay,) "we run an East line agreeable with the extremest part of the westermost angle of the said Watkins point, over Pocomoke river, to the land near Robert Holston's, *and there have marked certain trees*, which are so continued by an East line running over Swansecute's creek, into the marsh of the sea side, with apparent marks and boundaries, which, by our mutual agreement, according to the qualifications aforesaid, are to be

received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay."

We think there is internal evidence that this agreement was drawn up by Col. Scarborough. We suppose Chancellor Calvert was instructed to agree to the best attainable line. We will give the reasons for this opinion hereafter. It is manifest that the attempt of Col. Scarborough and the Virginians to establish the location of Watkins point, at the Manokin and Wicomico rivers, had utterly failed and been abandoned. It has been shown that the Virginia grants, between the Pocomoke river and the ocean, had extended far North of Watkins point, as claimed by Lord Baltimore. It has not been, and we confidently assert that it cannot be shown, that Virginia ever granted a foot of land North or West of the Pocomoke bay and river, and East of Tangier sound, except Foxs and Watts islands, which were granted long after the Calvert and Scarborough line was run. Col. Scarborough's invasion and "undue proceedings" at Annamessex and Manokin in October, 1663, were utterly repudiated and disclaimed by the governor and council of Virginia; and from that time to this every foot of land North of Cedar straits and Pocomoke bay and river, and East of Tangier sound, has been claimed and held under Maryland grants and governed by Maryland laws, as part of Somersett county.

When Col. Scarborough made his expedition to Annamessex, in October, 1663, he states that he found Stephen Horsey settled upon lands granted by, and holding a commission as justice of peace from Lord Baltimore, and streneously, in the presence of the Colonel and his forty armed horsemen, he refused to recognise the authority of the Virginia government. It is evident that the line, if ever run at all, had been run across this very land of Horsey's, as if intended as a divisional line, had left a part of it in Virginia. This is shown by the prolongation Westward by Michler in 1858, crossing this identical land then owned and occupied by descendants of Stephen Horsey, the original patentee. The prolonged line crossed other lands in the same predicament, in its entire course from the right bank of the Pocomoke river to Tangier sound. Other lands also South of that line, and between it and Pocomoke bay and river, had been granted by Maryland before 1668, and certainly if Virginia had intended to claim jurisdiction over the territory South of the line, and North of Pocomoke bay, similar and reciprocal provisions to obtain grants from Virginia, to confirm the title of the settlers, would have been inclu-

ded in the articles of agreement. But the articles of agreement relate only to the Virginia grants lying to the North of the divisional line between the Pocomoke river and the ocean. The land owners under Virginia titles North of that line had been ascertained by running the line to the ocean. A list of them had been made and submitted to Governor Calvert, and his written promise, under instructions from Lord Baltimore, to confirm their title by grants from his lordship, had been obtained on the 11th day of June, 1668, fourteen days before the articles of agreement for quieting possession were signed by Calvert and Scarborough. The articles consist of four items. 1*st*. Lands on the seaboard surveyed or patented and seated in right of Virginia, and now fallen within the divisional line to Maryland; 2*nd*. Lands patented by Virginia in any other place, within the said line, and not also patented in Maryland; 3*rd*. Lands patented and *seated* in right of Virginia within the said line, and patented likewise in Maryland, but not *seated* under said patents, unless the lands have been *seated* in defiance of the Maryland government, after warning given. All these were to enjoy their lands, upon taking a patent from the proprietary of Maryland. 4*th*. Land *patented* only in right of Virginia, for which also there is a patent in Maryland, the Maryland patent shall carry the land.

There is not the slightest intimation in these articles, that Maryland had granted any land which, by the running of the divisional line, had fallen within the jurisdiction of Virginia. And not only were Horsey and others left in the undisputed and undisturbed possession and enjoyment of all their lands already granted by Lord Baltimore, but all of the remaining unpatented lands South of the prolonged line upon the North side of the Pocomoke river and bay, down to Cedar straits and Tangier sound, were, after 1668, granted by Lord Baltimore, and have been occupied and governed as Maryland territory, in as full, free and unquestioned manner as any other lands within the admitted limits of the charter. And the records of Somerset county show the transmission of title from the patentees, by deeds, wills, descent and judicial sales, down to the present owners. It was but natural, under the circumstances, that Col. Scarborough should desire to fix the line between Pocomoke river and the ocean, as far North as possible, so as to keep their lands, for which they had obtained grants from Virginia, under the Virginia jurisdiction. If he could have shown that "the extremest part of the Westermost angle" of the point made by the Big and Little Annamessix rivers, was the Watkins point of the

charter, then there could have been no doubt that the divisional line must have run thence by the shortest line to the ocean. But this was impossible. Hence the necessity to make Watkins point cover a very large extent of country. After having agreed upon its limits, it became necessary to fix the point of departure *from* the point so described, and "so called," to the ocean.

That point of departure must be from the termination of Watkins point, on the Pocomoke river, because the preposition "from" is exclusive. If the Pocomoke river was not the Eastern bound of Watkins point, as described in the agreement, where was the Eastern bound? Big Annamessick river or bay was on the North; Pocomoke bay on the South, and certainly the sound (then sometimes called Nanticoke sound, but since known as Tangier sound,) was its Western bound. Then where, but at the Pocomoke river, was its Eastern bound?

To ascertain the point of departure on the Pocomoke river towards the ocean, they state "we have run an East line (not *from* but) agreeable with (that is to say, corresponding with, or in the direction of,) the extremist part of the Westermost angle of the said Watkins point, over Pocomoke river, to the land near Robert Holston's." The theory upon which they had agreed left them no alternative. They were to run the line East, *from* Watkins point, and not across it. If they agreed upon such a theory as to what was Watkins point, they must abide by its logical results. Having fixed its Northern, Southern and Western limits on Tangier sound, they could not be certain how far North, within these limits, they could start for the ocean, on and from the Pocomoke river, without first having ascertained it in some mode, by fixing upon a point on the sound, within those limits, with which the line over the Pocomoke river to the ocean should be "agreeable," or correspond. If any line was actually run from a point on Tangier sound to the right shore of Pocomoke river, we can conceive of no other purpose of such a line consistently with their report and existing facts, than to ascertain the spot of departure on that river towards the ocean. If such line was ever run from the Westermost angle of Jones island, it traversed a space of more than 15 miles from sound to river; crossing in its course Little Annamessick river, Ape's Hole creek, East creek, and Merumsco creek; and the whole line, except where it crossed creeks and marsh, at that time was probably thickly set with large trees. It is impossible to conceive an adequate reason why, if the line was run as part of a permanent boundary line between Maryland and Virginia, they should not "have

marked certain trees" at the beginning, and "so continued with apparent marks and boundaries," to the Pocomoke river. That they did not do this, their report most clearly implies. And hence McDonald and Lee, commissioners in 1858, and their first instructions to Lieut. Michler to trace the line in question, state: "It is supposed that there is still standing some old marks of the Scarborough line;" and add, "It is inferred from documents in possession of the commissioners, that the commission of 1668 *did not mark the line West of the Pocomoke river*, and *that in all probability you will find no marks to guide you.*" And after Michler had run the prolonged line Westward from the Pocomoke river to the sound, at Janes island, he reported that "No boundary line marks of any kind were found West of the Pocomoke, and the inhabitants professed to be in ignorance of the existence of any." The same result attended the inquiries of the present commission after the most diligent and thorough examination, on oath, of many of the oldest and most intelligent citizens now residing on, and in the vicinity of, the prolonged line. Again, if the line from "the extremest part of the Westermost angle" was to be the boundary from the sound to the Pocomoke river, there was certainly as much necessity of marking the beginning on or near the sound, where the land was washing away, as there was for marking the beginning of the line Eastward at and from the crossing of the Pocomoke river. The "Westermost angle" must have been "the point without a name" laid down on Smith's Map, and described in the depositions of Capt. Will. Jones, Col. Scarborough and others, made in 1664, apparently for the purpose of indicating that point as the true Watkins point. That "point without a name on Smith's Map," must have been situated between the mouths of the Little and the Big Annamessick rivers. It was the only point of high land on the main for 20 or 30 miles Northward, after leaving the neck of high land, at the mouth of the Pocomoke river or bay. The rest of the country was low, broken marshes. That point of land afterwards became known as Janes island. In 1668 it must have extended, perhaps, three or four miles from the present shore line, Southwesterly into the sound. It has since been entirely washed away, leaving but a narrow, sandy beach, between the sound and an extensive marsh. But a long, narrow shoal, reaching far out into the sound, and the Southwesterly direction of the sound channel, the waters being forced there by the high land on the main, indicate its former locality.

Living witnesses testified before the commissioners their recollection

of it when the end was a high clay bank some 12 to 15 feet above the water, and when wheat was grown upon it. There are traditions of a peach orchard near or on the spot where the light-boat was formerly anchored, considerable farther out from the shore than the present light-house on that shoal. Michler, in his report in 1858, stated that "although the angle of this point is even at this day the most Western one, still many years ago the land made out into the sound, a much greater distance. Janes island is said by Capt. John Nelson, aged seventy-two years, to have extended, within his recollection, to the present position of the light-ship, now anchored about a mile and a half from the present shore line."

It must have been evident to Calvert and Scarborough in 1668 that all the points of land upon that shore were constantly and rapidly washing away by the action of the wind and waters—hence the necessity of some marks upon the land near by not liable to such change. But there being no such marks found, and no record or tradition of any, the location of the "Westermost angle" has become impossible of any certain identification, notwithstanding Michler's supposition that the anchorage of the light-ship was very near the initial point of the Scarborough line. But no such result has attended the boundary line on the east of the Pocomoke. Upon reaching "the land over the Pocomoke river near Robert Holston's," they "there marked certain trees, which are so continued by an East line, &c., to the sea side," with apparent marks and boundaries, which, by our mutual agreement according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland. Michler's report stated that "Along the whole length of the line between Cingoteague bay and the Pocomoke river, a distance of between eighteen and nineteen miles, there were existing of such marks, at the time of the survey in 1858, thirty trees, one gate—the site of the ruins of an old house standing at the time the Scarborough line was run—two state roads located on the line measuring nearly ten thousand eight hundred feet, making in all one mark for every half mile."

We submit that these facts are utterly irreconcilable with the idea that a continuous land line of fifteen miles from the sound to the Pocomoke river was ever run and intended to be considered as a "divisional line between Virginia and Maryland," and that the East line of "marked trees" and of other "apparent marks and boundaries" from the Pocomoke river to the seaside was the only divisional line *run* from the Watkins point, "so called," and so agreed upon, "as the bounds of

Virginia and Maryland"; thus leaving the whole of Watkins point, as described and agreed upon by them, within the limits of Maryland, as the evident meaning of the charter required. The charter line, as we have seen, called for "a right line drawn from Watkins point on the West unto the main ocean on the East." "So that the whole tract of land, divided by the line aforesaid, between the main ocean and Watkins point unto the promontory called Cape Charles may entirely remain forever excepted to us, our heirs and successors."

The theory of the Calvert-Scarborough line leaves the water line of the Pocomoke river and bay to follow the Watkins point, "so called" in their agreement, to the Chesapeake bay as the divisional line separating Virginia and Maryland westwardly from the land near Robert Holston's, on which stood the "certain marked trees."

It has been already remarked that the theory that Janes island was the westermost angle of the Watkins point described in the agreement, is based solely upon the fact that the prolongation Westward of the marked line reached Tangier sound at Janes island.

In point of *fact* it was not the most Western angle. All the indications, as well as tradition, show that the most Western angle was at the Northern end of the neck of land which we suppose at that time to have extended from Annamessick marsh to nearly West of Onancock river, which Northern end subsequently became Fox island. Within the memory of living witnesses the Northwestern angle of that island extended far out into the sound, and was heavily wooded with large pines. The stumps still remain far out in the water. This fact, especially when considered in connection with the traditions from old Mr. Nelson (the father of the John Nelson mentioned by Michler), that he had always heard that the divisional line between Virginia and Maryland crossed the North end of Fox island, would have indicated that place as the "Westermost angle" of the land afterwards formed into Fox island would have passed over the water of Pocomoke bay for some twelve miles or more, and thus being a water line, it was of course impracticable to indicate its locality by "apparent marks and boundaries." And this line, according to the location of Pocomoke bay and river on Smith's Map, probably reached the East shore of the river "near the land of Robert Holston," as mentioned in the agreement. The waters of Tangier sound and Cedar straits now cover the locality of that Northwestern angle.

It is not, we think, difficult to show by Smith's History and Map that the "point without a name" on the map between what are since

known as the mouths of Big and Little Annamessex rivers, was a totally different point from Watkins point, which is located and named on the map. In Dr. Russel's account of the exploring expedition up the Eastern shore (i. Smith's Hist. p. 174), it is stated that after leaving the river Wighcocomoco and having passed Russel's (now Tangier) islands, "falling with a high land upon the main, found a great pond of fresh water, but so exceeding hot we supposed it some bath; that place we called Point Ployer, in honor of that most honorable house of Monsay, in Brittaine, that in an extreme extremity once relieved our Captaine. From Wighcocomico to this place all the coast is low broken isles of morass, grown a mile or two in breadth and ten or twelve in length, good to cut for hay in summer and to catch fish and fowl in winter; but the land beyond them is all covered over with wood, as is the rest of the country."

The mouth of the Wighcocomoco or Pocomoke then was, as it now is, south of what now is known as Watts island. Thence going North you pass Tangier islands, then (including Fishbone and Herne islands) extending as far North as Fox island is now. From the mouth of the Pocomoke to Point Ployer at that time (1608) the coast was low broken isles of marsh. And from Cedar straits to Janes island such is now the character of the coast. There may then have been (in 1608), and for thirty years thereafter, an unbroken neck of land, as we have supposed, flanked on the East and West by low, broken islands of marsh, which have long since been washed away, and some of them have become submerged within the memory of living witnesses. Smith's Map indicates many islands in that vicinity which no longer are seen. The distance of ten or twelve miles from the mouth of the Pocomoke river North would about reach the place indicated by Janes island bar, as formerly occupied by Point Ployer. There is no tradition, so far as we can learn, of "a great pond of fresh water so exceeding hot" as is described by Dr. Russel. It was probably near the shore where they landed, and must have been occasioned by a subterranean boiling spring. Before the settlement of Europeans in that vicinity, the point containing this great pond of hot fresh water was doubtless washed away, or else probably some tradition of such a natural curiosity in such a locality would have been handed down from one generation to another. There is a place in the sound described as being not far from the end of the bar, and North of the present Janes island light-house, called "Puffy hole." Tradition says that at that place, for the space of a hundred yards around, the

water was always in commotion, as if boiling up from the bottom, even in a perfect calm, and when other waters around it were still, and that formerly there were no soundings. It is said that this spot was often visited by the British officers during their occupation of Tangier island in the war of 1812, and that on one occasion they ran out ratline enough to fill a hogshead without finding bottom. The map of the United States coast shows that near the Northwest end of the bar there is a sounding at the depth of fourteen and a half fathoms, with soundings rapidly shoaling on the South to nine, and on the East and West to six fathoms and less. But the locality of Point Ployer is shown further by the mention in the account of Smith's second expedition of Watkins, Reads, and Monfords points being on each side of Limbo. Smith's Map shows the location of each of those places: the straits of Limbo (now Hooper straits), with Monfords point, to the North of them, and Watkins and Reads points to the South on the Pocomoke river.

After the above description of Poynt Ployer by Dr. Russel, his account proceeds: "Being thus refreshed in crossing over from the main to other isles," they were in great danger of being lost in a terrible storm. They were forced by ill weather to remain two days on these uninhabited islands, which they called Limbo. Thence sailing for the main they fell in with the river Cuscarawaock (the Nantikoke), thence they "passed by the straits of Limbo for the Western shore." The isles they called Limbo were evidently those now known as Smiths islands and Holland islands. And the only point of high land "upon the main" from Russels (Tangier) isles to Nanticoke river was that since known as Janes island, which must have been the Point Ployer of Smith's History.

It was therefore a mistake to suppose that that point was ever any part of the Watkins point of Lord Baltimore's charter.

Another mistake was the course of the line, a mistake which was not discovered until 1858, when the line was traced by Michler. Instead of finding it an East line as called for in the agreement, he found it 5°. 15″ North of East. This error, Michler supposes, was occasioned by running the line by compass, without allowing for the variations of the needle, which he found to have been about 5° 15″ in 1668.

The mistake in running the line from the Pocomoke river to the ocean without allowing for the variation of the needle, gave Virginia

twenty-three square miles (14,720 acres) of Maryland territory in the Northern part of Accomack county.

But the agreement, whatever may be its true construction, was acquiesced in by Charles II. and Lord Baltimore, who were the principals in the controversy. We have shown the practical construction of the agreement by Lord Baltimore in continuing to hold and grant all the lands North and West of the Pocomoke river and sound and Cedar straits. In the absence of any evidence to the contrary, we submit that Charles II. and his governor and council of Virginia acquiesced in that construction, and if that construction was not the true one, Col. Scarborough, at least, would have been found remonstrating against it. Doubtless Scarborough was entirely satisfied with the result of his negotiation. Lord Baltimore had been required to abandon the valuable and extensive territory between Onancock river and the divisional line, which Scarborough so carefully designated by "marked trees" and other "apparent boundaries." There were many weighty reasons constraining Lord Baltimore to adjust his controversy upon the best attainable terms. His charter had narrowly escaped the ordeal of the parliamentary and Cromwellian revolutions. And he was well aware of other controversies threatening still more important portions of his territory. It was necessary to conciliate the Virginians and to end the controversy with the agents of his sovereign. He was well aware that Charles II., whilst in exile, in the year after his father's death on the scaffold, had granted the "Northern Neck" to Lord Hopton and others, and, as stated in Col. McDonald's report, including "the rivers Potomac and Rappahannock, and all the islands within their banks"; and that after his restoration to the throne, in a letter dated in 1663, just at the time when Scarborough raised the question as to the true location of Watkins point, the king had referred to his grant to Lord Hopton as embracing "all the land lying between the rivers Potomac and Rappahannock and Chesapeake bay, together with the rivers themselves and all the islands within the banks of said rivers," thus coming in direct conflict with the charter of Maryland upon the line of Potomac. In addition to this, Lord Baltimore knew the immediate danger to his territory on the Delaware bay. Charles II. had, in 1664, granted a patent to his brother James, Duke of York, for sundry tracts of land in America, including all the land from the West side of Connecticut river to the East side of Delaware bay, and had sent naval and land forces, whereby the Swedes and

Dutch were compelled to submit to his majesty, and the Delaware territory was placed under the rule of the Duke of York. Thus it remained in 1668, when Scarborough and Calvert met to determine "the place that should be accounted" Watkins point.

In this situation, Lord Baltimore was compelled to yeild to Scarborough's demands. This he did, probably, also, in the hope thereby to strengthen his position in regard to the impending controversies as to the Delaware territory and the Northern Neck. It was doubtless to this yielding of the territory in Accomack, between Onancock river and the divisional line, that Philip Calvert referred in his remarks to Wm. Penn during the interview between the lord proprietary, Charles Calvert, and Penn, at West river, in December, 1683. Penn had, in 1681, obtained from Chas. II. a charter for Pa. In 1682, he obtained a release from the Duke of York of his claim to Pennsylvania, and also grants of the three lower counties of Delaware. Thus fortified, and with a letter to Lord Baltimore from the king, he went to West river to adjust the boundaries of the two provinces. In his report of the interview to the lord's committee of plantations, he states: "The first thing I did was to present the king's letter, which consisted of two parts—one, that the Lord Baltimore had but two degrees, and the other, that he should admeasure his said degrees at 60 miles to a degree. This being read by him first privately, then publicly, he told me the king was greatly mistaken, and that he would not leave his patent to follow the king's letter, nor could a letter void his patent, and by that he would stand. This was the substance of what he said from first to last during the whole conference. To this I answered, the king might be misinformed rather than mistaken, and that I was afraid the mistake would fall on his side, for though his patent begins at Watkins point and goes to the 40° of North latitude, yet it presumed that to lie in the 38°, else Virginia would be wronged, which should extend to that degree, &c.

To this his uncle and chancellor returned that to convince me his father's grant was not by degrees, he had more of Virginia given him, but, being planted, and the grant intending only land not planted or possessed, but of savage nations, he left it out, that it might not forfeit the rest."

Penn certainly misunderstood Chancellor Calvert's remark. The only places within the charter limits ever claimed to have been settled by Virginians before the date of the charter, were Kent and Palmers

islands; and they were not "left out," but were awarded to Lord Cecelius Calvert, as covered by his charter.

Chancellor Calvert's allusion was, doubtless, to the fact, that the charter of Maryland covered "more of Virginia" on the Eastern shore, in Accomack, than Lord Baltimore then claimed, but being settled by Virginians in 1668, "he left it out" by the Calvert-Scarborough agreement. It is inferred from a letter from Col. Scarborough to the governor of Maryland, relating to his intended expedition against the Apateague Indians, dated "From Onancock, August 28th, 1659," that settlement had already been made at that place. And as before 1668 Virginia grants had been made far beyond the "divisional line" agreed upon, it is highly probable that the Virginians were in the actual occupancy of most of the lands between Onancock and the divisional line when Calvert and Scarborough met. Penn was probably not aware of the circumstances, and hence did not comprehend the scope of the remark. There is no mention whatever of any line of latitudes in the "agreement" of 1668, because there was none in the charter. The "divisional line" agreed upon from the Pocomoke to the ocean, *happened* to be on or near the 38th parallel as then laid down upon the maps before, and at that time existing; and perhaps from this coincidence arose the mistake of the king and Wm. Penn. But that the Southern end of Watkins point was understood to extend below the 38th parallel, and to be wholly included within the limits of Somerset county, as described in the act of Maryland assembly of 1742, before cited, is clearly shown by an ancient map found among the papers of Josiah Bayley, for many years attorney general of Maryland, and for which we are indebted to his son, Dr. Bayley, of Cambridge, Maryland. The map is inscribed, "To the American Philosophical Society." This map of the peninsula, between Delaware and Chesapeake bays, with the said bays and shores adjacent, drawn from the most accurate surveys, is inscribed, "by John Churchman." It is without date, but was made before 1776, because it has the name of "West New Jersey," and after 1742, because it has Worcester county delineated upon it, as separated from Somerset, by the act of 1742. It is upon the largest scale of any ancient map we have seen, and altogether the most accurate, except that it is singularly erroneous in the location of Tangier and Watts islands. The 38th parallel of latitude on this map crosses the Chesapeake at the Southern shore of Potomac river, a little North

of Smiths point; crosses an island, we suppose to have been intended for Smith's island; crosses a peninsula called Watkins point near its Southwestern end; crosses Pocomoke bay and an island in it, at Ratcliffe point; and crosses the Peninsula to the ocean, upon the divisional line as located on this map, between Worcester and Accomack counties. Bozman says, truly, that Russels isles, on Smith's Map, "were the largest cluster within the bay." He remarks upon the extraordinary circumstance, that in the latest and best maps of Maryland and Virginia at that day, (1811,) a disagreement occurs in the denomination given in these lowest islands. In Griffith's Map of Maryland, published in 1794, they are called Tangier islands; but in that of Virginia, published by Bishop Madison in 1807, these same islands are denominated "Watts islands," and they are so called in the old Churchman map before mentioned.

Lord Baltimore persistently refused to ascertain his Northern bounds by measuring two degrees from any place. The controversy with Penn about the Delaware territory was referred by Charles II. to the lords of the committee of trade and plantations, in 1683, but their report was not made until after the death of Charles and the accession of James II., in 1685. The report recommended, that the land between the Delaware and Chesapeake bays should be divided into two equal parts, by a line from the latitude of Cape Henlopen to the 40th degree of N. latitude, (the South boundary of Pennsylvania by charter,) and that one-half thereof, lying towards the bay of Delaware and the eastern sea, be adjudged to belong to his majesty, (viz., to King James, who granted it to Wm. Penn, when Duke of York,) and that the other half remain to Lord Baltimore, as comprised in his charter."

This division was by the king in council ordered immediately to be carried into effect, (the order enuring to the benefit of Penn as grantee of James Second, when Duke of York,) and though delayed for many years by obstructions of Lord Baltimore, was finally, by Queen Anne, ratified and confirmed in all parts, and commanded to be put in execution without delay. (Proud's History Pennsylvania, vol. i., 293, &c.)

By this order of the king, in council then ratified and ordered to be carried into immediate execution by Queen Anne, it was proposed to deprive Lord Baltimore of more than one and a quarter millions of acres of his territory upon the pretext afforded by two unfortunate Latin words in his charter—"hactunes incutta," which, though urged

in vain against the charter by the Virginians in 1633, 1638, and during Cromwell's time, and by the Dutch ambassador in 1659, were finally made available to accomplish this momentous result under the potent influence of Wm. Penn. But the order still remained unexecuted. Perhaps the mode of enforcing its execution, consistently with the principles of Magna Charter and English law, was not free from doubt. And though Lord Baltimore's right to the 40° of North latitude was expressly recognized by the report of the committee of plantations, and by its confirmation by the king and council, Penn persisted in his efforts to extend his Southern bounds to the head of Chesapeake bay. He procured a writ of quo warranto to be issured against Lord Baltimore's charter, thus threatening it with total destruction. But the revolution of 1688, and other revolutions and troubles, so affected both proprietaries and their provinces that the controversy lingered till the death of Penn, in 1718; was revived by his sons and devisers, who, in May, 1732, obtained from Lord Baltimore a written agreement whereby he conceded to the Penns the Delaware territory, and that the Southern boundary of Pennsylvania should begin at a latitude of 15 miles South of the most Southerly part of Philadelphia, and run due West to the Western extremity of the two provinces. The agreement was finally enforced by a decree for specific performance passed in 1750, which formed the basis of another agreement between the two surviving Penns and Lord Frederick Baltimore in 1760. The result was the completion of the existing line between Delaware and Maryland, and Pennsylvania and Maryland in 1768.

We submit that this historical summary, the facts of which are unquestionable, clearly show that the location of the Pa. line 15 miles below the 40° of latitute or at 39°, 43′, 18″ North of the equator, was not the result of a line run or measured North, two degrees, at 60 miles to a degree, from Watkins point on the 38th parallel of latitude, as stated by Col. McDonald in his report. And we further submit that the 38th parallel either as erroneously located in former times or as correctly located on the map of Chesapeake bay, made by the United States coast survey, has no connection whatever with the question of the true location of Watkins point, as called for in the charter or of the Calvert-Scarborough line.

The Western Boundary of Maryland.

The boundary line between Maryland and Pennsylvania extended West to the true meridian of the first source of the river Potomac. Whether this first source was at the head of the North or South branch was a subject of controversy, between the proprietary of Maryland and the claimants of Northern Neck, down to the revolution—1776; and between the states of Maryland and Virginia from that time down to the year 1852.

During the controversy, actual surveys proved that the source or first fountain of the South branch was the most Western, and the proprietary of Maryland and the state of Maryland had persistently claimed to the first fountain of that branch. It may be true that Lord Baltimore's charter did not confine him expressly to follow the true meridian to that first fountain. And if this be admitted, we submit that the result would have been to give to Lord Baltimore his election between following the meridian due South to the first fountain and selecting the most advantageous line in a Southeasterly direction to the further—that is, the Southern bank of the stream which flowed from the first fountain. Sir George Calvert was well aware that in construing grants from the sovereign the rule of the common law, that the grant shall be construed most strongly against the grantor, is reversed from considerations of public policy; and, therefore, in preparing his charter, he provided against the operations of this rule of construction, by the 22d section of the charter, as follows, viz: "And if peradventure, hereafter it may happen that any doubt or question should arise concerning the true sense and meaning of any word, clause or sentence contained in this our present charter, we will charge, and do command, *that* interpretation, to be applied always and in all things and in all our courts and jurisdictions whatsoever, to obtain which shall be judged to be more benefical, profitable and favorable to the aforesaid Baron of Baltimore, his heirs and assigns."

McMahon's History of Maryland, p. 50, states the grant of Lord Hopton and others to have been "of all that tract of land, lying and being in America, and bounded within the heads of the rivers Rappahannock and Quircorigh, or Potomac (the courses of the said rivers as they are commonly called and known by the inhabitants) and the Chesapeake bay."

He says: "These grants of the Northern Neck, as it will be per-

ceived, call for the lands lying on the South side of the Potomac to its head, and in this call there was nothing inconsistent or clashing with the call of the charter of Maryland," and "therefore a conflict between these two grants could only arise from the extrinsic difficulty or doubt as to the true location of the first fountain or head." On page 69 McMahon says: "As to the *chartered* extent of Maryland there can be little room for doubt." "*The first fountain of the Potomac*" is evidently a descriptive term intended to designate the most Westerly source, and applies to the South branch, the source of which lies considerably West of that of the North branch. The extent of territory lying between the two branches is estimated at *half a million of acres*, including some of the most fertile lands of Virginia." In 1776 Fairfax was proprietor of the Northern Neck, to the extent of the ownership of the land, but subject to the jurisdiction of the royal government of Virginia. By the constitution of Virginia of 1776 the commonwealth succeeded to all the rights of sovereignty belonging to an independent nation. That constitution declared that "the territories contained within the charters erecting the colonies of Maryland, Pennsylvania, and North and South Carolina, are hereby ceded, released, and forever confirmed to the people of these colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potomaque and Pocomoke, with the property of the Virginia shores and strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon.

"The Western and Northern extent of Virginia shall in all other respects stand as fixed by the charter of King James I. in the year 1609, and by the public treaty of peace between the courts of Britain and France in the year 1763, unless by act of this legislature one or more governments be established Westward of the Alleghany mountains."

The state of Maryland had succeeded to all the rights of Lord Baltimore's charter, but the act of quit claim of Virginia still left open the question as to the extent of the territory contained within the charter. The controversy, from the beginning, seems to have been confined to the question whether the Maryland charter extended to the North or to the South branch. Repeated efforts to settle it by commissioners appointed by the respective states failed. At length Maryland, by the act of 1852, proposed to adjust and mark the West-

ern boundary line, "beginning therefor at the Fairfax stone." This offer was accepted by the act of Virginia of March 1858, and by an act of Maryland of March 1860, the line "as surveyed in the year 1859 by the commissioners appointed by the states of Maryland and Virginia" was established as "the Northwestern line of the state."

Thus ended a controversy of more than a century's duration. And the results of losses to Maryland of territory once clearly included within the limits of her charter may be estimated thus: To Delaware, one and a quarter millions of acres; to Pennsylvania, two and a half millions of acres; and to Virginia, a half million of acres—making a total of four and a quarter millions of acres of land, in addition to about one hundred and fifty thousand acres "left out" between Onancock river and the Scarborough line on the Eastern shore.

The Southwestern Boundary Line of Maryland.

After the call to the true meridian of the first fountain of the river of Potomac, the charter says, "thence verging towards the South unto the further bank of the said river, and following the same on the West and South, unto a certain place called Cinquack." (Bacon's translation.) "Thence stretching towards the South unto the furthest bank of the said river, and following the West and South side thereof unto a certain place called Cinquack." (Ogilby's America.) "Then tending downwards towards the South, to the further bank of the said river, and following it to where it faces the Western and Southern Coast, as far as to a certain place called Cinquack, situate near the mouth of the said river, where it discharges itself into the forenamed bay of Chesapeake." (Thos. Edlyn's Tomlins.)

At the time of Lord Baltimore's charter the Potomac river had been explored only to the falls, and up the Quirough, which was supposed to head further West than the main river, and both were supposed to head East of the Blue Ridge. In this uncertainty, and with the aid only of Smith's Map, the descriptions of the head springs, and course of the river, were necessarily conjectural, and therefore vague. Like the other great rivers flowing into the bay, on its Western shore, its general course was supposed to be Southeast. In describing the Western line from Delaware bay, the charter had the words, "transeundo orecta linea per gradum predictum usque ad verum meridianum,"—going by a right line on the degree aforesaid as far as to the true meridian, &c. But after arriving at the true meridian of the

first source of the river, another word is used to indicate the course, viz., "deinde vergendo versus meridiem,"—thence tending, or the old word "trending," towards the South; "ad retteriorem dicti flumenis ripam"—to the farther bank of the said river; "et eam sequendo," and following it, (the bank, not the river, for if "*it*" referred to the river, the Latin would have been "id," agreeing with "flumen," understood,) "qua plaga occidentalis et meridionalis spectal"—where the Western and Southern coast or shore *looks;* meaning where, or in the direction that, the *right* bank or shore *looks*, or in the direction towards which the right shore lies; as contradistinguished from the *left* bank, or shore, which is the Eastern and Northern shore. Bacon's version has "ad meridionalem," in the place of "et meridionalis" in the copy from the Rolls' office. And this seems to be the "gross departure from the *original*," which Col. McDonald supposed led to the erroneous opinion, or translation, indicating the Southwestern shore of the Potomac as Maryland's boundary. It is probable that "et meridionalis" is the correct version, as it is better Latin and more accurately descriptive. But it is not perceived that the sense is materially changed. The translation would be "where the Western coast looks toward a Southern direction"—"meridionalem" being an adjective, a noun must be understood or supplied. Mr. Tomlins is certainly in error in translating the words, "qua plaga occidentalis et meridionalis spectal"—"to where *it* faces the Northern and Southern coast." To what does "*it*" refer? Certainly not to the preceding "it," for that referred to "eam (ripam," understood.) "Plaga," shore or coast, is substituted for "ripa" bank. "Plaga," is the nominative to "spectal"—and there is nothing in the Latin to be translated "it." It is the "coast or shore" that "faces," or looks, or "lies toward." But it is submitted, with deference to Mr. Tomlins, a London "attorney at law and record solicitor," that "plaga," the coast or shore, is personified and represented as looking at the river and following the flowing stream with its gaze in its onward course towards the bay. In 1829, Chancellor Bland, of Maryland, in deciding upon a claim to certain water rights on the Potomac river, and remarking upon the jurisdiction of Maryland over that river said: "The boundary called for in the charter of Maryland is from the first fountain of the river Potomac; thence verging towards the South unto the further bank of the said river, and following the same on the West and South unto a certain place called *Cinquack*, situate near the mouth of the said river, &c. To the full extent of this call for

the right bank of the Potomac, Md. held; and under that holding all the islands in the river have been granted by patent from the land office or legislative enactments or titles derived from this state."

"Before the revolution, Maryland granted lands between the North and South branches of the Potomac." Binney's case, 2 Bland's Chancery Reports, 127.

The Virginia constitution of 1776 and the compact of 1785 certainly modified, to some extent, the charter limits of Maryland. There were a few maps after 1750 which indicate the divisional line on the North shore of the Potomac to Point Lookout. These were probably so made in the interest of the Fairfax claim under the grant of Charles II. to Lord Hopton and others. The recital of the terms of this grant by McMahon and by Col. McDonald shows a material difference. McDonald says: "The express words were the rivers of Potomac and Rappahannock, and all the islands within their banks." If these were the terms of the grant, so far as they relate to the Potomac and its islands, they were in direct conflict with the charter of Charles I. to Lord Baltimore, nearly twenty years before the grant to Hopton, and, of course, to that extent were merely void. One or two maps have been found which indicate the divisional line down the middle of the Potomac river and across the bay to the South of Watkins point and up the Potomac river. But the most authentic maps existing in 1776 indicated the line from Smiths point direct to Watkins point. It is remarkable that in the compact of 1785 provision is made for punishing offences committed on that part of Pocomoke river within the limits of Virginia or where the line of division between the two states upon the *said river is doubtful*," but no such provision is made in regard to the Potomac, a much wider river. The reason must have been that Virginia had excepted from the limits of the Maryland charter on the Potomac river only "the Virginia shore and strand," which could only extend to low water mark, and to such improvements beyond that mark, as Virginia might deem proper to authorize, leaving the residue of the river within Maryland jurisdiction for punishing offences committed upon it. This seems to be the legal effect, so far as regards the question "of jurisdiction." For all beneficial purposes, such as "the right of fishing in the river," &c. The compact is that "the river shall be common, and equally enjoyed by the citizens of both states." It is understood that the above is the construction acted upon by the judiciary of both states, and hence within a few years a Virginia court declined to take jurisdiction of a

homicide committed on a steamer lying at Acquia creek, because the proof was that the offence was committed on a part of the steamer which was below low water mark. The prisoner was sent to Maryland, tried, convicted and executed in Charles county, Maryland.

There seems to have been no difficulty originally in understanding the meaning of the charter. The line of boundary began at a point on the Chesapeake bay; thence by a right line to the ocean; thence by and with the ocean and Delaware bay to the 40th degree of latitude; thence West by a right line to the maridian of the first source of the Potomac river, thence towards the South (and a right line South answers that description) to the farther bank of the river; thence following the bank and the Western and Southern shore of the river down to Cinquack near the mouth of the river, and thence by the shortest line to the beginning. There never was any doubt where Cinquack was. It is plainly marked on Smith's Map and Lord Baltimore's Map, and all the ancient maps, and was rightly described in the Virginia proclamation of 1638 as being at the Great Wicocomico river and the starting place of the last line of the charter.

That the Southwestern shore of the Potomack was, down to 1776, understood by the Virginians to be the boundary line of the Maryland charter, is, we submit, implied by the terms used and already cited from the Virginia Constitution of that date. The territory contained within the charter is ceded to Maryland, with all rights which might at any time have been claimed by Virginia, except the free navigation and use of the Potomack and Pocomoke rivers, with the property of the *Virginia shores and strands bordering on either of* said rivers, and all improvements which had been or shall be made thereon. And we think it is still more clearly implied by the compact of 1785, re-enacted in the Virginia Code of 1849 and 1860, under the title "Compact and Boundary between Virginia and Maryland." The tenth section declares: "That crimes and offences committed in that part of the Chesapeake bay which lies within the limits of Virginia, or that part of the bay where the line of division from the South point of Potomac river (now called Smiths point) to Watkins point, near the mouth of Pocomoke river, may be doubtful; and on the part of Pocomoke river within the limits of Virginia, or where the line of division may be doubtful," &c. This article assumes as a fixed fact that the line of division runs from the South point of the Potomac river, now called Smiths point, to Watkins point, near the mouth of the Pocomoke river. And by this compact Maryland gave up her

charter claim to follow the bay shore down to the place formerly known as Cinquack, at the mouth of Great Wicocomoco river, distant about six miles South from Smiths point. And again: This fixed fact is assumed by the action of both states in authorizing the joint commission of 1858. The Virginia act of March 26th, 1858, recites that: "Whereas the general assembly of Maryland has passed two acts for running the boundary line between that state and the state of Virginia, beginning therefor at Smiths point, at the mouth of the Potomac river, and running thence to the Atlantic ocean, to form the Eastern line; beginning at the Fairfax stone, on the Potomac river, sometimes called the North branch of the Potomac river, at or near its source, and running thence due North to the line of the state of Pennsylvania, for forming the Western boundary line; and, whereas, the legislature of the state of Maryland has requested the appointment of a commissioner on the part of this state to act in concert with the commissioner of Maryland to run, ascertain and mark the said lines: Therefore,

"I. Be it enacted by the general assembly of Virginia, That the governor be and he is hereby authorized and required to appoint as soon as may be, a commissioner, who, together with a commissioner who may be appointed on the part of Maryland, shall cause the said lines to be accurately surveyed, traced and marked with suitable monuments, from Smiths point, at the mouth of the Potomac river, to the Atlantic ocean; and from Fairfax stone, situated as aforesaid, to the Pennsylvania line as aforesaid."

We think, therefore, that it ought to be considered settled beyond question that the divisional line across the Chesapeake bay is to be run from Smiths point. There can be no doubt about the true location of Smiths point. It is upon the island at the mouth of Potomack river, which, by patent, dated 18th March, 1650, was granted by Sir Wm. Berkley, governor of Virginia, unto Sam'l Smith, for 529 acres of land. It is described in the grant as abutting Northerly upon the mouth of Potomac river; Southerly upon Little Wickocomico creek; Easterly upon ye mayne bay; and Westerly upon a branch that divides this land from a parcel of land commonly called "King's Neck." Of course, like all other points of land similarly situated, it has been washed away, and greatly changed since 1785. Mr. Dela Camp, who made the survey of Somers cove and of the shore of Janes island, under the direction of Michler, in 1858, and again under the joint

commission of 1867, stated in his report that he found all of them very much changed since 1858.

The map of the United States coast survey, showing the soundings in the vicinity of this island, may be considered as indicating with reasonable certainty where the land originally extended.

The boundary line across the Chesapeake bay.

The description of this line in the charter is brief and free from doubt—viz: From Cinquack "by the shortest line to the aforesaid promontory, or place called Watkins point."

The American Atlas, containing the most correct and authentic maps of the British colonies down to 1776, has "a Map of the Middle British Colonies, by Lewis Evans, of Philadelphia, corrected and improved by Thos. Jeffreys, geographer to the king, and published in London 15th June, 1775," which indicates the divisional line between Virginia and Maryland from Smiths point, near Cinquack, a few degrees to the North of East, passing South of Watkins point through Pocomoke bay and across the peninsula to the ocean. It contains also "A Map of the most inhabited part of Virginia and the whole province of Maryland," &c., drawn by Joshua Fry and Peter Jefferson, in 1775, and inscribed by Thos. Jeffreys to the Earl of Halifax and the other hon. commissioners for trade and plantations. Watkins point is distinctly laid down on this map, and the divisional line across the peninsula East to the ocean is clearly marked below the 38°th of latitude, and under it are these words: "This line was run 27 May, 1688." The line on the Potomac and across the Chesapeake bay is not indicated on this map. Smiths point is shown as an island at the mouth of the Potomac and Little Wicomico rivers, a very little South of Watkins point on the Eastern shore, as located on this map.

In the rooms of the Maryland historical society is "A Map of Virginia, Maryland, Pennsylvania, and East and West New Jersey, by John Thornton, at the Platt in the Minories, and by Wil. Fisher, at ye Postern Gate, on Tower Hill, London," supposed to have been published about the year 1700. On this map the divisional line between Virginia and Maryland begins at Smiths point, thence across the bay by a due East course, and crosses the peninsula to the ocean by a line indicated by a row of boundary trees on each side of it. The divi-

sional line on this map leaves Smiths island entirely in Maryland. The Churchman Peninsula Map, before described, has no divisional line indicated across the bay. The island *on* which is Smiths point is located about two miles South of the 38th parallel as located on this map, and an East line from it crosses the lower end of an island supposed to represent Smiths island, and touches the Southern end of Watkins point, and if extended would strike the East shore of Pocomoke bay about two miles South of the 38th parallel. The shortest line upon the map of the United States coast survey from Smiths point, running East about three degrees North, will strike the Westermost angle of Great Fox island near Cedar straits, and the shortest line to the land North of Cedar straits and Pocomoke sound will strike the Westermost angle of a tract of land called Plain harbor, granted by the proprietary of Maryland on the 19th day of July, 1702, to Isaac Horsey and Nathan Horsey for five hundred acres of land. The patent described this land as lying and being in Somerset county, between the sound and Pocomoke bay and Cedar straits, beginning at the mouth of a creek on Pocomoke bay, on the Westermost side thereof, called Broad creek; hence along the said bay Westerly several courses and distances to Cedar straits; thence along therewith North 15½ degrees Westerly, taking in Cedar hammock, 118 perches to the sound or bay-side; thence along the sound Northwesterly North, &c., &c., to the beginning.

This patent of Plain harbor completes the chain of Maryland grants extending from Tangier sound by Cedar straits to Pocomoke bay and up the Northeastern shore of the bay and river to the land West of the beginning of the Calvert-Scarborough line at the marked trees on the East side of the river, covering all the land South of the prolongation Westward of that line to the sound at Janes island. It is admitted that no grant from Maryland has been found for the land South of Cedar straits; but that since they were found, and after the neck of land which formerly extended from Annamessex marsh Southward to the North side of the mouth of Pocomoke bay at Watts island had been broken into Fox and Watts islands, those islands appear to have been granted by Virginia, and to have been since held, and are now held under Virginia titles; and have ever since the date of the grants of Fox island in 1699, and of Watts island in 1702, been under the jurisdiction and government of Virginia, as part of Accomac county, as fully and as exclusively as the lands upon the North side of Cedar

straits and Pocomoke bay, as before described, have been owned, held and governed under Maryland grants, as part of Somerset county.

The record of these grants by the respective states, and the certain holding in accordance with them, strongly corroborate our construction of the Calvert-Scarborough agreement, and the tradition derived through old Mr. Tornemay Nelson, that the divisional line between the two states crossed the North end of Fox island. That part of the island where the line was said to cross, has doubtless long since been washed away, and is now covered by the waters of the sound and Cedar straits. The tradition must have had its origin (after Smiths point had been substituted for Cinquack as the starting point towards the Eastern shore) in the fact that the Northwestern angle of Fox island was the point which would be reached by the shortest line from Smiths point; for there is no record that any line was ever run across the bay, or any means adopted by the two states to fix a boundary at the termination of the line on the Eastern shore. After the agreement of Calvert and Scarborough that the North point, formed at the mouth of Pocomoke river by the bay, should no longer "be accounted" the Watkins point of the charter, as claimed by Lord Baltimore, but that the parcel of land as described in their agreement should be so "accounted," it became inevitable that the line across the bay from Smiths point should strike the angle of that Watkins point nearest to Smiths point. And that angle is at Cedar straits.

Smiths Island.

A right line from Smiths point to Cedar straits, as those places are located on the map of the United States coast survey, leaves all of Smiths island as located on that map within the limits of Maryland. The Churchman Map and most of the maps we have examined, which were made before the United States coast survey, locate Smiths island farther South than its true position as ascertained by the coast surveys.

The experimental line, run by the direction of the joint commissioners in 1858, in its prolongation Westward from Pocomoke river, was upon the theory that thereby "the Westermost" angle of Watkins point, as described in the Calvert-Scarborough report, might be ascertained. Michler states that "drawing the line" from "Smiths point" "across Smiths island," *at* or *near the point* where the said line

is said to pass, it will be seen that it intersects the prolongation of the Scarborough line very near the anchorage of the light ship, and where formerly existed the shore line." He states that the Southern extremities of Smiths island have been always acknowledged to be within the jurisdiction of Virginia; and that with the exception of four or five acres of firm ground were sites for rude fishermen's huts. The other portions of these islands, *South of what is considered the boundary line from Smiths point to Watkins point* across the Chesapeake bay, consist of salt marshes." We have already given our view of the Calvert-Scarborough line, and of the charter line across the bay to Cedar straits. We think it highly probable that the idea that any part of Smiths island was within Virginia territory had its origin in the dispute over the true location of Watkins point, which commenced in 1663. The Virginia records show that Henry Smith, then of Accomack county, on a warrant for lands due him from Virginia, took up a tract of land on Smiths island, for which he obtained a grant from Governor Berkley, of Virginia, dated 6th October, 1667. This grant is recited in a deed, in the land records of Somerset county, Maryland, as follows, to-wit: "Doth grant unto the said Henry Smith one thousand acres of land, situate in Accomack county, being part of an island, beginning where the East and West line from Smiths island doth intersect, and bound on the Northern part therewith; running Southerly to the farthest extent of the said island; bound on the Eastern and Western sides by parts of Chesapeake bay and sunken marshes. The description of this beginning is so indefinite and vague that we suppose it would be impossible to locate the tract of land. This grant bears date the year before the Calvert-Scarborough agreement. The authority and power of Calvert and Scarborough were limited to the single duty "of meeting upon the place called Watkins point," and "thence to run the divisional line to the ocean sea." They had no authority to establish a line across the bay, or across Smiths island, and they made no attempt to do so. We have found no record that any divisional line was ever run across Smiths island under the joint authority of the two colonies or states; or that any such line was ever authorized to be run, or was run, by the direction of either Virginia or Maryland. Mere recitals in land grants to private individuals by either of the provinces or states, or calls in such grants for a divisional line between states, afford no evidence to prove the existence or location of such divisional line as having been established by competent authority. Divisional lines between states can

be established only by treaty, compact, or some public charter or record of a public act, establishing such line by competent authority. Maryland and Virginia grants, subsequent to 1668, of land, between Pocomoke river and the ocean, call for the divisional line between those two colonies. But it is the line marked and established by the Calvert and Scarborough compact, of which there is record evidence showing when and by what authority and by whom it was run and established. But there is no evidence of any such line across Smiths island. And notwithstanding the numerous depositions taken by the present joint commission in relation to several divisional lines, stones and boundaries upon Smiths island, we confidently adhere to the statement contained in our report upon this subject to the Maryland general assembly in 1868, that "there is no *certain tradition*, so far as the commissioners could ascertain, to fix the location of any divisional line between Maryland and Virginia across Smiths island. The testimony upon this subject was uncertain and conflicting. Besides the aforesaid grant to Henry Smith, there is on record, among the Virginia land patents, a grant dated 23d Oct., 1703, to Francis McKenny, Arcadia Welbourne, Daniel of St. Thomas, Jenifer and John West of a tract or tracts of "marsh and woodlands, it being contained on six islands, beginning at a marked lightwood stump standing near Nanticoke sound, thence by marked trees and over marshes and guts, *West* 1020 *poles* to the main bay of Chesapeake, bounded on the West therewith on the South by Old Herne Island straits, and on the East by Nanticoke sound, and within this bound is contained 3,170 acres." The running of this West line across the North end of Smiths island, in 1703, doubtless gave origin to the tradition testified to by Severn Bradshaw and others. This grant must have been obtained in ignorance of Henry Smith's grant from Virginia of 1,000 acres, and of other previous grants from Maryland, covering all the lands and waters within the limits of Smiths island, and on finding out the mistake, the grant must have been abandoned, as we have found no evidence of any land on Smiths island ever having been held or claimed under it. The first Maryland grant on Smiths island is the patent of Cadger's island—200 acres to Robert Cadger, 23d September, 1665, on the Eastern shore, standing in the bay, and calls to run along a marsh belonging to Annamessex bay, by a line drawn South to the straits mouth, standing against Pocomoke river. This description is evidently widely erroneous. A deed for part of this island in 1746 describes it as lying South of Cadger straits, which are North of Smiths island.

The grant of Jones island "to Leonard Jones, 10th June, 1671, near Cadger islands 100 acres, and other grants from Lord Baltimore cover all the land North of the thoroughfare, comprising about one-third of the entire island. The next grant is of 1,000 acres, surveyed for Col. Wm. Stevens, 7th June, 1679, assigned to Henry Smith and patented to him 2d September, 1682, called Piteraft, and described as 'an island of broken woodland and marshes between Chesapeake bay 'and an indraught of water called the sound, beginning on the bay at a tree near the mouth of Smiths thoroughfare, bounded thereby Easterly to the sound, and by the side of the said sound *to the divisional line* drawn between Maryland and Virginia, thence West by said divisional line to the bay-side; and by the bay to the beginning. This tract called Piteraft, and sometimes "Pitcheraft," is bounded on three sides by waterlines—the thoroughfare, sound and bay. But there is no distance given to any one of its lines, and nothing whatever to indicate where the divisional line West to the bay-side began or ended except that it started from the sound and extended West to the bay. Henry Smith removed from Accomac to Somerset county, Maryland, before 1693, and finding that Col. Stevens had, under a warrant from the land office of Maryland, surveyed and located a tract of land on Smiths island, calling for a divisional line between Maryland and Virginia, he obtained an assignment of Stevens' equitable title and received a patent for Piteraft. If Virginia had title to the 1,000 acres granted him in 1667, or any part of them, he thus became owner of all the island South of Smiths thoroughfare. His first sale and conveyance of part of these lands was to John Tyler, of 200 acres, by deed dated 8th August, 1693, which recites the grant by Sir Wm. Berkley of 1,000 acres lying in Virginia, and the survey of Piteraft by Col. Stevens, the assignment to Smith and the patent to him for 1,000 acres of land called Piteraft from Lord Baltimore. The deed conveyed to John Tyler a parcel of land, 200 acres, taken out of *the said* 2,000 *acres* granted by said Sir Wm. Berkley and Lord Baltimore, "being part thereof in Virginia and part in Maryland"; but there is nothing whatever in the descriptions or calls to indicate what part was in Virginia or what in Maryland. The deed is of record among the land records of Somerset county.

Within the limits of this deed to John Tyler, was included the only high land fit for habitation on the Eastern side of the island. At the time of the deed, 1693, there were probably 5 or 6 acres of

this high land, which has been mostly washed away, leaving an extensive shoal and about two acres of high land.

At this place John Tyler is supposed to have built his dwelling; and from time immemorial it has been known and called "Horse hammock." The descendants of John Tyler continued to own it until 1842, when, by deed, dated October 2d, 1842, Wm. Tyler and wife conveyed to Peter Evans "all that tract or parcel of land called 'Horse hammock,' or by whatsoever name the same may be called, situate, lying and being on Smiths island, in Somerset county, in the state of Maryland." Peter Evans removed to Accomack county, and by deed, dated 3d October, 1857, conveyed Horse hammock to John W. Marsh, describing it as being in Somerset county, and contained within metes and bounds, beginning at a well known bounder stone lying at the sound side, about three-fourths of a mile to the North of the house, and thence running a West course across the marsh to Tylers creek; thence Southerly by the creek to a well known point called Horse hammock point; and thence up the sound side to the beginning. Marsh and wife, by deed of 30th January, 1866, conveyed same land, by same description, to Johnson Evans and John W. Evans; and John W. Evans and wife, by deed of May 11th, 1872, conveyed their interest, by the same metes and bounds, to Johnson Evans.

All these deeds are recorded in Somerset county, and the place and its occupants have always been under Maryland jurisdiction as a part of Somerset county as far as we have been able to ascertain. The stone mentioned in these deeds could never have marked the beginning of a divisional line across the island between the two states, because the deed to John Tyler called for part in Maryland and part in Virginia, and all South of the divisional line would be in Virginia.

But all question as to the jurisdiction of "Horse hammock" ceases as soon as it is settled that the line across the bay starts from Smiths point. According to the map of the United States coast survey a right line to Janes island light (even if that point should be decided to have been the place where the Westermost angle was) will leave Horse hammock point and a small part of South point marsh and Shanks hammock, with its "4 or 5 acres of firm ground" and its half dozen families, within Virginia. And we think it cannot be questioned that a decision fixing "the extremest part of the Westermost angle of said Watkins point" at the Southwestern end of Janes island bar, would involve a correction of the mistake, or "undue proceeding," in

running the line in 1668, 5° 15′ North of East, instead of allowing for that variation of the needle so as to "run an East line," as their report avers that they did, and which the charter required. We are informed that the act of the Virginia assembly, in force in 1668, required surveyors, in running lines, to allow 5 degrees for variation of the needle. If this be so, Colonel Scarborough, an intelligent Virginian, and surveyor general of Virginia under "his royal majestie's commission," would be presumed to have been aware of it. And if he knowingly caused or permitted the divisional line to be run without such allowance it was (to use the phrase of Governor Calvert on a former occasion) an "undue proceeding." In either case equity would rectify the error.

The result would be a due East line running South of the lighthouse in Little Annamessex river, crossing Ape's Hole creek a short distance North of its mouth, and striking Pocomoke bay a short distance beyond Ape's Hole creek; thence across Accomac county, South of Pitt's wharf and New church, and within a quarter of a mile of Horntown, and including in Maryland nearly all of Chingoteague bay. This line would deprive Maryland of a small part of her territory and some valuable citizens in Little Annemessex neck, who on becoming citizens of Virginia, would have opened to them the oyster grounds, not only of Pocomoke bay, but of all other Virginia waters accessible to citizens of Accomac county. It would restore to Worcester county the twenty-three square miles, equal to 14,720 acres of land, now included in Accomac county in consequence of that error. But it is believed that such result is not desired by either side. It is natural that the residents in the vicinity of the line should prefer to remain, as far as practicable, under the *jurisdiction of the state to which they have been accustomed.*

To effect this,

A just and equitable compromise line ought to be adopted.

It is eminently a fit case for the adoption of a just and equitable compromise line. We have entered into a somewhat elaborate examination of the probable original location of the Watkins point of the charter. We have shown the large concession of Maryland territory by the agreement of 1668. That concession was perhaps inevitable, as there was no tribunal in that day to which Lord Baltimore could have resorted with hope of fairness and justice.

The retracing in 1858 of the line of 1668 disclosed that by an error in the original running of that line nearly 15,000 acres of land were improperly taken from Worcester county and included in the county of Accomac.

It has been shown that in the compact of 1785 Maryland yielded the line from Cinquack and accepted Smiths point (five or six miles further North) as the starting point of the line across the bay. And in the controversy over the North and South branches of the Potomac, she yielded a claim which, in the judgment of some of her most eminent lawyers, was unquestionably legal and just. It is remarkable, too, that in the compact of 1785, while conceding that the right of fishing in the Potomac river shall be common to and equally enjoyed by the citizens of both states, Maryland omitted to secure, by express terms, reciprocal rights in the Pocomoke river. It is but just to Virginia, however, to state that until recently her laws regulating the taking of oysters and terrapins in the rivers Pocomoke and Potomac, secured to the citizens of Maryland equal privileges with citizens of Virginia in that regard. We regret to be compelled to say that the attempt of late years to exclude citizens of Maryland from equal privileges in taking oysters in Pocomoke sound, is a departure from that reciprocity, in that regard, which had theretofore ever existed between these two states. We suppose that this departure originated in a misapprehension of the purpose of the preliminary survey made by Michler under instructions of the Virginia and Maryland commissioners in 1858. Their commission was to retrace and mark the boundary "between Smiths point, at the mouth of the Potomac; and the Atlantic." In the execution of this duty, it became obvious that further legislation would be necessary before the line could be established. Col. Lee reported that they "concluded to obtain, in addition to the evidence already at hand, the best local information by an actual survey of the vicinity of the boundary, and to lay the whole before their respective legislatures for their action thereon." But the legislation of Virginia seems to have proceeded upon the mistaken idea that the preliminary survey established a divisional line; whereas the survey revealed, for the first time, a serious error in running the line on which were "marked certain trees," and "other apparent marks and boundaries," while the residue of the line was left in obscurity and uncertainty. Col. Lee accounted for this, with much force, in his report, in the statement that "until recently all existing maps of Maryland and Virginia erroneously placed the North shore of

Pocomoke bay so much too far North as in some degree to conceal the want of conformity with the provisions of the charter; as upon these maps the present boundary between Worcester, Maryland, and Accomac, Virginia, if produced Westwardly from Pocomoke river to the Chesapeake bay, would pass for almost the whole distance over the Northern portion of Pocomoke bay."

The present joint commission is empowered to adjust and settle this disputed line, subject to confirmation or rejection by the respective states. And in view of the whole case, the Maryland commissioners respectfully submit to the Virginia commissioners the following line, to be established by compact between, that is to say—

Beginning at low-water mark at the divisional line between the two states of West Virginia and Virginia, upon the Southwest coast or shore of the Potomac river; thence following the said river at said low-water mark, to all wharves and other improvements now extending, or which may hereafter be extended, by authority of Virginia from the Virginia shore into the said river beyond low-water mark, and following the said river, around said wharves and other improvements, to low-water mark on the Southwestern side thereof, and following the said river in the same manner down to the Eastermost angle of Smiths point at the mouth of the said river Potomac, where it flows into the Chesapeake bay; thence by a right line to the centre of Cedar straits upon Tangier sound, near the Southern end of Watkins point; thence by a right line in a Southeasterly direction to the channel of Pocomoke bay or river nearest to Cedar straits; thence up, by and with the said channel of said bay and river to a point therein opposite to the place on the East shore of the said river ascertained by Mr. De la Camp, in 1867, as the beginning on said shore of the divisional line run and marked by Calvert and Scarborough in 1668; and thence by and with said divisional line, as surveyed and laid down on the map made by said De la Camp for the joint commissioners in 1868, to the Atlantic ocean. The right of fishing and taking oysters in Pocomoke bay and river to be common to the citizens of both states, subject to concurrent regulations by the two states.

ISAAC D. JONES,
LEWIS L. WATERS,
WM. J. AYDELOTT,
Commissioners of the State of Maryland.

B.

STATEMENT

On the Part of the Commissioners of Virginia.

A succinct statement before the joint commission of the states of Maryland and Virginia, to settle and adjust their boundaries, made on the part or the commissioners of Virginia, at Richmond, Va., November 7th, 1872, citing some of the main evidence, and reserving the right of adducing other evidence, if necessary, to support the claims of Virginia.

I.

"By letters patent granted by Queen Elizabeth to Sir Walter Raleigh, which bear date March 26th, 1584, she gave to him and to his heirs and assigns free liberty to search for and find such *barbarous lands not possessed* by *any Christian people*, as to him might seem good and the same to occupy and 'enjoy forever.' This grant was without any other definite limits." See Hakluyt, vol 3d, p. 243; also Williamson's History of North Carolina, vol. 1st, p. 219.

This first settlement made by the English in Virginia, and the first British settlement established anywhere on the continent of North America (see Hakluyt, vol. 3, p. 243) was abandoned by its founders A. D. 1590. See Smith's History of Virginia, vol. 1, p. 105.

Queen Elizabeth, in 1584, named the whole country claimed by Great Britain, Virginia. See Hakluyt, vol. 3, p. 246.

That queen died in 1603, and was succeeded by James I., and in the year 1606, he issued his letters patent to settle colonies in Virginia. The first patent bears date April 10th, 1606. By these he divided that portion of Virginia which lies between 34° and 45° N. L. into two colonies and two districts of territory. In one of these,

called the First or Southern colony of Virginia, he authorized the London company, Sir Thomas Gates and others, his associates, to plant a colony wherever they might choose, between 34° and 41° N. L.; and he vested in them a right of property in the land, extending along the sea coast fifty statute miles on each side of the place of their first plantation, and reaching into the interior 100 statute miles from the sea coast. The other of these colonial districts, called the Second or Northern colony of Virginia, he allotted to the Plymouth company, Thomas Hanham and others, his associates. These he authorized to plant a colony wherever they might choose between 38° and 45° N. L., and he gave to them a territory of similar limits and extent to that given to the first colony. He provided, however, that whichever plantation of the said two colonies should be *last made should not be within* 100 *miles of the other that might first be established.* These two colonies, at first called the London and Plymouth companies, soon dropped their names, and the name of Virginia, which at first was applied to both of the colonies, was retained by the Southern colony only, while the Northern colony was called New England. See Charters, Stith's History of Va., appendix No. 1.

The London co. commenced its settlement first. On the 13th May, 1607, the adventures of that company established their first habitation at the place named by them James City. See Smith's History of Virginia, vol. 1, book 3, ch. 1, p. 149.

The first charter of April 10th, 1606, itself enables us to determine with great accuracy the limits of the grant made by it to the London company. If a meridianal line be drawn through James City and extend each way to the distance of fifty statute miles from it; if parallels be drawn through the extremities of this meridian, and extended to the sea coast; if 100 statute miles from thence be laid off upon each of these parallels; and if a straight line be drawn from the extremity of one of them so determined to the extremity of the other, the diagram so to be constructed may be considered as a parallelogram or square, the base of which will be 100 statute miles, and its area 10,000 square miles.

Such a diagram so constructed, is in precise accordance with all the calls of this charter. This charter was granted before the country to which it was designed to apply was discovered, and the territory could not reasonably be confined to such limits, owing to its many disconnected peninsulas. This was soon discovered by the explorations of Captain John Smith in the year 1608 (see Smith's History of Virgi-

nia, vol. 1, book 3, chps. 5 and 6, and the map). Accordingly the London co. applied to the king to alter this charter, and on the 23d May, 1609, he issued new letters patent of that date for this purpose.

The Plymouth co. had then made no settlement, so that the whole country granted *was as open to the new grant as it had been in* 1606.

Before this second charter was granted to the London company, the Northern headland, at the mouth of James river, was discovered, and called by the name it still bears—Point Comfort. Taking this known and established position as a starting point, the new charter granted to the company "all those lands, &c., situate, lying and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast to the Northward 200 miles; and from the said Point or Cape Comfort, all along the sea coast, to the Southward 200 miles; and all that space or circuit of land lying from the sea coast of the precinct aforesaid up into the land throughout from sea to sea, West and Northwest; and also all the islands lying within 100 miles along the coast of both seas of the precinct aforesaid." See Stith's History of Virginia, appendix No. 2, p. 8, etc.

As one of the purposes of this second charter is declared in it to be "to grant a further enlargement and explanation of the former grant of 1606," and as no other change in the mode of determining the new and enlarged limits from that required for determining the boundaries under the first charter, except that the precise point of Cape Comfort is substituted for James City, we are bound to adopt the same mode of determining the new limits which had been adopted and approved in the former case. Therefore if a meridianal line be drawn through the point of Cape Comfort and extended each way to the distance of two hundred miles from thence; if parallels be drawn through the extremities of this meridian and extended from sea to sea (*i. e.* from the Atlantic to the South sea or Pacific) the diagram so constructed may be considered a parallelogram. The base of this will be the sea coast of the Atlantic, having a meridianal length of four hundred miles, bisected by the parallel of the point of Cape Comfort, and the altitude of this parallelogram will be the distance from sea to sea.

If we would know why the limits of the London company was extended precisely two hundred miles to the North of the parallel of the point of Cape Comfort, curiosity will be satisfied by taking the trouble to calculate the difference of latitude between that parallel and the more Northern parallel of 40° In making this calculation allow-

ance must be made for the trifling error caused by the imperfection of the clumsy instruments used in 1609 for making observations of latitude, as well as for the erroneous opinion then entertained as to the length of a degree of a great circle in English statute miles. We know now the exact quantity of each of these errors in our case; but it must be recollected that one of them (the last) puzzled Sir Isaac Newton almost a century after 1609. But, correcting the calculation in this way, we will so discover that two hundred English statute miles, measured along a meridian from the parallel of the point of Cape Comfort will carry us to the parallel of 40 North latitude; which last parallel was then made the common boundary between the two great districts of Virginia and New England. (The foregoing condensed statement is from Report No. 457, 28th Cong., 1st Session, H. Reps., "Issue of Scrip," etc., to accompany bill H. Reps. No. 353, made by Hon. E. W. Hubard, from the Committee on Public Lands, partly written by L. W. Tazewell, Esq., and partly by B. W. Leigh, Esq., and partly by Mr. Hubard. See his letter.)

This clear view of the grants and definite delineation of the territory granted, make manifest several cardinal points to be remembered throughout the discussion of the true boundaries of Virginia:

1st. The grants speak *by lines of latitude*, by *extent of measurement by miles*, and *not by natural objects*, such as places, rivers, &c., except as to the initial points of James City and Cape Comfort.

2d. They give no courses of lines, except Northward and Southward from the initial point, and West and Northwest from sea to sea; and this applies to the territory granted, and *not to the lines* by which it was bounded; for the first grant was made before the discovery of the territory, and the second enlarged merely the first.

3d. The first grant *overlapped the territories of the two companies three degrees of latitude, from 38° to 41° North latitude;* and the second made the 40th degree the Southern limits of New England without granting to the London company, sole, up to 40th° North latitude.

4th. The two lines of 38 and 40 North latitude, thus became cardinal points of boundary, and must be observed—the first as the *Northern limit of Virginia*, and the last as the extreme Southern limit of New England.

5th. And these facts and the 100 miles distance from one settlement to the other, enjoined by the charters, show the way the door was opened to the king for the prerogative grant to Lord Baltimore.

6th. Smith's Map laid down the line of 38° N. L. far South of where it is now known to be, but not far from Smiths point, showing, as will hereafter appear, that the intent and meaning of the grants by Charles 1st on 20th June, 1633, to Cecilius Calvert, Baron of Baltimore, in Ireland, was to bound Maryland on the Western shore of the Chesapeake bay by the river Potomac, and on the Eastern shore of that bay by the parallel of 38° N. lat. on the South, that degree of lat. being the extreme limit North to which the territory of the London co. extended *originally in sole right*, and the space between 38° and 40°, being comparatively unsettled, except by the Indians, owing to the clause which put the two companies 100 miles apart. And, as will appear hereafter, the Watkins point named in the charter to Lord Baltimore as the initial point of bounds on the Eastern shore, was then known to be under the line of 38° North latitude. See "Considerations of Lord Baltimore's Patent, both in Law and Equity," and Calvert and Scarburgh's report in 1668. And to prove that Lord Baltimore himself tacitly admitted that his extreme boundary South, on the Eastern shore, was 38° N. L., see his own memoir of his conference with William Penn, in which Penn again and again so asserted to him without contradiction by him, when he was claiming North to 40° N. L. But especially note No. 117 of the De Jarnette papers, August 19th, 1682, being the letter of the king reminding Lord Baltimore that he had but 2° N. L., South of 40° N. L.

Such was the original limits of the colony of Virginia, under the charters of the London company and the grant to Lord Baltimore.

II.

The charters of the London company (there were three) were cancelled by a judgment of the court of king's bench, pronounced in a case of quo warranto depending in that court at its Trinity term in the year 1624. But this took away only the *monopoly of the company* and the power of its government over the colony, which were vested in the company by the charter, *without affecting at all the territorial limits or other rights of the colony itself;* and the only change was from the proprietary government of a trading company to a royal government over the same dominion and colony. See Hubard's Report, and see Chalmers' Annals, p. 63. The colonial legislature opposed the restoration of the charters to the company in 1642. See sec. 1, Hen. Stat. at Large, pp. 230, 236; see also answer of Governor Sir

Wm. Berkely in 1671 to one of a series of statistical inquiries of the commissioner for foreign plantations—"What are the bounds and contents of the land within your government?" 2 Ib. 514. See also the opinion of the Supreme Court United States in Johnson vs. McIntosh. Judge Marshall said: "This (the charter of Virginia of May 1609) was *annulled so far as respected the rights of the company*, by the judgment of the court of king's bench on a writ of quo warranto; *but the whole effect allowed to this judgment was to revest in the crown the powers of government and the title to the lands within its limits.*" 8 Wheaton, 578. The privileges of free denizens, or persons native of England, and the titles of proprietors of lands in free and common socage guaranteed by the charters, survived their revocation; and property in the territory survived to the grantees or patentees. See Hubard's Report, p. 20.

The United States have recognized the right of Virginia to the lands included in the limits of these charters, and so has Maryland by accepting the deeds of cession from Virginia of her Northwestern territory on the conditions imposed by herself, and the constitution of the United States recognizes and ratifies the contract of this cession acknowledging title in article 6, clause 1. Virginia does not claim her title under the charter. She claimed it as a self-created body politic and corporate, which in 1776 proclaimed itself a free, sovereign and independent state. Self-created and self-sustained, after 1776, she claimed nothing *under these charters*, which were necessarily abrogated by the very fact of her independence. She refers to them constantly, as she would to any history, geographical treatise, or authentic map, as the best evidence the nature of the case permits, to prove what are the metes, bounds and extent of the territory which she claims. She refers to them as she does to the grants made to others—of Maryland to Baltimore, of North Carolina to Lord Clarendon and others, and of Pennsylvania to William Penn—as proofs of what were and are the limits of that region in America called Virginia.

Virginia claims by virtue of her declaration of sovereignty, made in June, 1776, the truth of which declaration, then made, was afterwards (1783), recognized by the king of Great Britain, the former sovereign of this region. See Hubard's Report. Whilst a colony, in 1634, Virginia asserted her claim, under the charter, to the territory of Maryland, and the king, in council, *did not decide against that claim*, but left her to her remedy at law. See the McDonald papers, vol 2, page 135, S. P. O. col., vol. 6.

In all countries governed by the common law, precedent is of force to make law—constitutional as well as municipal law; in all civilized countries, without exception, prescription seems title. The precedent of the charter of Maryland, in effect, established the right of the crown to dismember from Virginia any part of her territory, at its discretion, without her consent; *but it in nowise affected the right of Virginia to such territory within her ancient limits as had not been dismembered from her.*

The charter was *annulled so far as respected the rights of the company, not in respect to the rights of the colony.*

The powers of government—the same powers which the charter had vested in the company as proprietor—were re-vested in the crown; the same title to the lands within its chartered limits, which the charter had vested in the company, was re-vested in the crown.

The charter, so far from being annihilated, was recognized. The vacant lands in the colony were henceforth crown lands in the king's dominion of Virginia, and the extent of that dominion was only to be ascertained by the territorial limits described in the charter. Those lands could only be acquired by grants from the crown, according to a system of land laws enacted by the colonial legislature, and through the instrumentality of the colonial government. See Hubard's Report. The argument drawn from the judgment against the London company, in 1624, if of avail to prove that Virginia was not thenceforth entitled to claim under the charter of May, 1609, would prove too much. It would prove that she had no charter at all, for she never pretended to have any other; it would prove that Virginia, in her political capacity, had no title to any territory whatever; not only no title to the Northwest of the Ohio, or West of the Alleghanies, but no title to the island of Jamestown, or the city of Williamsburg, or Old Point Comfort. See Hubard's Report—part written by B. W. Leigh.

But let her colonial existence and form of being be whatever it was, the colony became a sovereign state in June, 1776, and thereby became sovereign over her ancient limits, and the right of eminent domain is independent of all colonial charters or royal patents, and is as supreme as royalty itself.

III.

On the 19th August, 1629, Lord George Baltimore addressed to Charles I., a letter, now in the state paper office of Great Britain, en-

dorsed "My Lord of Baltimore to ye king—9th August, 1629," (see 2d vol. of the McDonald papers, page 24.) complaining of his colony in New Foundland, proposing to remove himself "with some 40 persons to his majesty's dominions in Virginia," and praying for a grant of "a precinct of land with such privileges as the king, his father, was pleased to grant him in New Foundland."

The king replied by letter to Lord Baltimore, dated November 22d, 1629, S. P. O., Colonial No. 38, vol. 5, (see the McDonald papers, vol. 2d, p. 1.) advising him to desist from further proceeding and to return to his native countrie with his first conveniency, and promising him much favor. The letter to the king was accompanied by several papers, the first of which is endorsed "Demands, with reasons for 2 degrees of Mr. Attorney General, 10th February, 1629." (McDonald papers, vol. 2, pp. 24 to 34 inclusive.)

In October, 1629, Lord George Baltimore went to James city (now Jamestown) in person. See last page of vol. 1st, Henning's Statutes at Large, as to the pilloring of Thom. Tindell for insulting and threatening Lord Baltimore, and the "letter from the commissioners of Virginia to the lords of the privy council" found in S. P. O., Colonial No. 39, Great Britain, announcing Lord Baltimore's arrival in the colony, in the beginning of October, 1629, from New Foundland, and that he was willing to reside with his whole family in Virginia, though his intention was to settle Southward at first; that they were willing to receive and entertain a person of his high rank. Whereupon they tendered the oaths of supremacy and allegiance to his lordship, and some of his followers, who, making profession of the Romish religion, utterly refused to take the same; that his lordship then offered to take "an oath—a copy of which was inclosed—but they strictly exacted the oath required by King James I.; and they implored that no Papists should be suffered to settle their abode in the colony of James city."

By the third charter of the colony, Papists were prohibited from settling in its limits; and the oaths of supremacy and allegiance, which Lord Baltimore declined to take, did drive him to settle North of 38° N. L., the extreme Northern sole limit of the London company by the original grant. As stated in the paper—"Considerations of Lord Baltimore's Patent," &c., &c.—already referred to, he went to Watkins point, lying on the 39° N. L., on that line where the Western shore boundary, the Potomac, mouthed, and which he represented to be settled by savages, and to be vacant between the Plymouth and

London companies. See his own map (Herman's) and Bowen's Map. See also McDonald papers, vol. 6, 38th instruction by the King Charles II. to Lord Culpeper, p. 33 or 35 and p. 132–135. See oaths of supremacy and allegiance changed, Id. vol. 7, pp. 317 319; alarm about war with France and Indians, and course towards Catholics, pp. 205, 206, 363. But see the British "State Papers," Colonial Entry Book, vol. 52, p. 88–89, August 19th, 1682; letter from the king to Lord Baltimore. The line from Watkins point, already settled, 2° N. lat. South of 40° N. L., fixed by the charter for Northern limits and named. 2° measured Southward, gives Lord Baltimore to 38°. See 117 of the Dejarnette papers. This supports Penn's repeated asseveration without contradiction by Lord Baltimore at the time, that he knew his boundary on the Eastern shore did not extend South of 38° N. L. See Dejarnette's papers, Lord Baltimore's own account of his conferences with William Penn. And this line, thus settled, did start almost exactly where 38° was then supposed to be, and ran upon that line, varying from it only the number of degrees (5°) allowed by the law of Virginia, and it was run from one natural object on the bay side of the E. S. peninsula, Watkins point, to another natural object on the sea side thereof—Swansea Gut creek—"over the Pocomoke river."

Lord Baltimore could not settle South of 38°, N. L., without taking the oaths of allegiance and supremacy. See Hen. Statutes at Large act 28, 1631–'32, against Catholics; and Id. against Quakers, 1659–'60, 1 H. Stats. at Large, pp. 532, 533.

IV.

The immense territory of the London company was dismembered—

1st. By the grant of Maryland to Cecilius Calvert, Baron of Baltimore, in Ireland, in 1633.

2d. By the grant of North Carolina to the Earl of Clarendon in 1665.

3d. By the grant of Pennsylvania to William Penn in 1681, and the grant to him of Delaware.

4th. By the treaty between Great Britain and France, called the treaty of Paris, in 1763.

5th. By the constitution of Virginia, June 29th, 1776.

6th. By her deed of cession of her Northwestern territory, March 1st, 1784. (See Hubard's Report.)

7th. The compact between her and Maryland in 1785 refers merely to navigation, fisheries and the jurisdiction over criminal offences, and not to boundary.

And of these grants on settling and adjusting the boundaries between Maryland and Virginia, we need look to the Maryland and Pennsylvania grants, to the treaty of Paris, to the first constitution of Virginia, and to the cession of her Northwestern territory by Virginia to the United States. And these are affected materially by the revolution in England in 1649; by the surrender of the colonies of Virginia and Maryland to the commonwealth and to Cromwell; by the grants ad interim to Lord Hopton, &c.; by the restoration of the proprietary rights of Lord Baltimore by the Charles II. in 1669; by the privation of his charter in 1790 by William and Mary; and by his restoration to his rights in 1715 by George I. Lord Baltimore never had quiet title to Maryland except from 1715 to 1776. But, undoubtedly, at the end of the colonial state of the British colonies in North America, Maryland had a separate and independent existence, as a sovereign state, and the question recurs—What then were her limits? That question we will examine "in limine."

V.

Without going into a critical analysis and translation of the charter to Cecilius Calvert—Lord Baltimore—in 1633, it may for the present be conceded, for the argument, that whatever were the boundaries fixed between the two colonies of Maryland and Virginia by the charter of Charles I. to Lord Baltimore, they were greatly changed by the "articles of surrender of the whole country of both colonies to the commonwealth and Cromwell on the 12th March, 1651."

We have seen that Lord Baltimore's charter or grant was disputed by Virginia at once, and the legal question has never been decided. The grantees of land from Virginia prior to his grant, such as that to Claiborne of Kent island, disputed his proprietary rights to their lands from the beginning.

In the midst of these controversies, the revolution of 1649 occurred in Great Britain.

The governor, Sir William Berkely, and the council and burgesses of Virginia, were loyal to Charles II. Charles I. was beheaded the 30th January, 1649. From that period the commonwealth in England commenced; and it continued, under different modifications, until the

restoration of Charles II. in 1660. Oliver Cromwell was declared protector on the 9th January, 1654, and died on the 13th September, 1658. His son Richard succeeded him, but abdicated in 1659. On the dissolution of the monarchy in England, doubts existed in this country whether the powers of the governor and council, and of all the other officers of the government deriving their appointments from them, were not extinct. This gave rise to one of the provisions of the first act of the grand assembly held at James City on the 10th October, 1649, which made it highly penal to maintain such doctrine. The principle was, however, solemnly recognized by the first article of the convention entered into between the commissioners of the parliament of England and the governor, council and burgesses of Virginia, on the 12th March, 1651. That convention annihilated the royal government and prerogative in Virginia. See Henning's Statutes at Large, vol. i., p. 358, and see note.

The first act of the assembly after the regicide proclaimed the treason of those who tried and convicted and decapitated the king; asserted the royal government as still continuing and existing; and declared all defenders of the execution of Charles I. accessory to the death of the king after the fact; and to doubt the right of succession of Charles II. was made high treason, and it was made equally high treason to propose a change of government or to doubt the power of the governor and government of Virginia. See Id. pp. 359–60–61.

By act III. of this assembly it was

Enacted, That the inhabitants which are or shall be seated on the South side of the Potomac river shall be included, and are hereafter to be accounted within the county of Northumberland.

By the articles "at the surrender of the countrie," agreed on and concluded at James City, in Virginia, for the surrendering and settling of that plantation under the obedience and government of the commonwealth of England, by the commissioners of the council of state, by authority of the parliament of England, and by the grand assembly of the governor, council and burgesses of that "countrye," it was solemnly agreed and concluded—

4th. "That Virginia shall have and enjoy the ancient bounds and lymitts granted by the charters of the former kings, and that we shall seek a new charter from the parliament to that purpose against any that have intrencht upon the rights thereof." Herein, by a power recognized as sovereign and absolute, both de jure et de facto, was all royal gov't, and authority annihilated and the ancient chartered limits

of Virginia restored to her. Whether she ever sought a new charter from the parliament or not, the royal grant to Lord Baltimore to any of her chartered limits was annulled by *actual conveation* and *treaty*, higher and more authoritative than any judgment of the king's bench in 1624, which enabled the king to dismember her territory or to "intrench upon it." See 1 Hennings Stats. at Large from p. 363 to p. 373 inclusive. Here it is seen that there was an entire revolution of gov't and its powers and authorities; that it was by a rightful and acknowledged gov't, destroying all royal prerogative, and by *treaty* restoring Virginia to all her original territory; and that a provisional gov't was organized for the colony and followed this revolution. Nothing could be more conclusive in political history than that, if king's bench took away the rights of the London company, the commonwealth and Cromwell and their commissioners took away Lord Baltimore's rights as a proprietary gov. of Maryland. The 3d charter of the London company prescribed that the oaths of allegiance and conformity should be taken in Virginia. The king himself could not dispense with them; and Lord Baltimore declined to take them. He evaded them by betaking his settlement to that neutral and common territory between 38° and 40° N. L., lying between the Plymouth and the London co. settlement. These two degrees, embracing about the distance of 100 miles, which the two companies were bound to keep between their settlements. Virginia had already granted patents to numerous settlers who had seated "dividents" in all that region. She had commissioned Wm. Claiborne, a surveyor, and sent him to survey the planters' lands and make a map of the country; to make discoveries along the coast and find a fishery between James river and Cape Cod. He and his followers settled mainly at and near Kent island, high up the Chesapeake bay. The charters had expressly provided "that all the lands were to be had and enjoyed in the country of Virginia by British subjects within the same, according as in the like estates they were had and enjoyed by the laws within the realm of England. The individual titles granted by Virginia before the grant to Lord Baltimore by the king, could not be disturbed by the Maryland charter. They were titles in free, and common socage were vested, and could not be annulled by the king himself. Lord Baltimore invaded or intrenched upon their private titles, and that was the cause of Claiborne's rebellion against Lord Baltimore's proprietary gov't.

The great massacre occurring in 1624, and the London co. being

convulsed by violent factions, the charter was annulled by quo warranto; Virginia became a royal province, and the company expired just ten years before Lord Baltimore obtained his grant and began to govern Maryland. But by that time Virginia had enacted laws for the registry of births, marriages, and burials by church ministers and wardens, and there were *parish records*. That was one test of jurisdiction and boundary. In 1634 the country was divided into 8 shires, which were to be governed as the shires in England; their names were James City, Henrico, Charles City, Elizabeth City, Warwick River, Warros Kyoake (now Isle of Wight, &c.), Charles River, Accawmack, and lieutenants were appointed the same as in England; and, as in England, sheriffs were elected, and sheriffs and baliffs where need required. See 1 Hennings Stats. at Large, pp. 233–'34. See also a copy of the rolls. Again, as early as 1623–'24, surveys for private planters' "dividents" were provided for and were to be recorded. See 1 Hen. S. at Large, p. 125. Edmund Scarborough had been repeatedly elected county lieutenant of Accomack, and was surveyor general of Virginia, when the boundary disputes first began between the two colonies. And from the beginning of the London co. colony the established church of England was in full authority in Virginia, and the church divisions into parishes were arranged, and there were then complete records of vestries. Conformity was strictly enforced, and non-conformists were compelled to depart the colony. The laws against Papists and Quakers were severely tyranical and rigidly executed. All these laws and their effects were so many tests of what settlements and population belonged to Virginia. And thus, before the grant to Ld. Baltimore in 1633, the Virginia colony was completely organized, and its affairs administered in a defined territory. Lord Baltimore disturbed those settlements. At once he assumed to grant and govern the lands of those seated as on Kent island within his admitted limits, denying the prior individual titles under Virginia grants, and he began to seat settlers beyond his limits, especially West of Pocomoke river, near its mouth on the Eastern shore. The reason why the refugees from Virginia took their settlements there, will be shown hereafter.

William Claiborne stubbornly resisted the proprietary claims of Lord Baltimore from 1633 to 1635; driven out of Maryland at last, he escaped to Virginia, but was arrested and sent to England to be tried for rebellion. The provisional legislature of Maryland having declared against the proprietary claims of Lord Baltimore, Claiborne

re-appeared in rebellion against Lord Baltimore in 1644, and the latter in turn was obliged to seek refuge in Virginia, and never returned to Maryland until about 1646, when he put down the rebellion, and died the next year. His successor remained in *disturbed possession* until 1649, when lo! in 1651, William Claiborne again appeared as one of the commissioners to demand the "surrender of the whole country" to the commonwealth of England in its second year. Not only was Virginia guaranteed "the ancient bounds and limits granted by the charter of the former kings," but also that all the patents of land granted under her "colony seal, by any of the preceding governors, shall be and remain in their full force and strength." She was granted free trade and freedom from all taxation.

The commissioners engaged for the parliament and the governor and council and burgesses for the whole colony on their respective parts. The commissioners of parliament were Richard Bennett, William Claiborne and Edmund Curtis. These articles were signed and sealed by the commissioners of the council of state for the commonwealth of England the 12th March, 1651, and they then proceeded from Jamestown forthwith to reduce Maryland, and in 1652 they established for her a provisional government—Bennett, governor, and Claiborne, secretary. From 1652 to 1654 they entrusted the government of that colony to a "Board of Ten." The assembly at Patuxent deprived the Catholics, notwithstanding the "Toleration Act," of all franchises, and a civil war ensued and lasted until the year 1657. It was only by the tact of Fendall that the proprietary government was re-acknowledged as late as 1658. And after Oliver Cromwell's death, the colonial authorities of Maryland herself asserted the supreme authority of the people, and that the allegiance of the colony was due to the king. For these general facts of history, see Holmes' University Series, and No. 142 of the DeJarnette papers—"Lord Baltimore's case uncased." Thus it may well be claimed that the colony of Maryland in turn became an imperial colony by treaty with the commonwealth of England, and that treaty was never disturbed or modified by any absolute act of Oliver Cromwell. If kings bench in 1624 could open the way to dismember Virginia by royal grant to Lord Baltimore—a fortiori—the revolution of 1649, and the "surrender of the country" in 1651, and the articles agreed and concluded by the commonwealth's commissioners with governor and council and burgesses of Virginia could restore the latter to her ancient limits—Maryland and Virginia both became imperial prov-

inces of the commonwealth of England, and were both within the prerogative of imperial grant. A consequence of this restoration of the limits of Virginia was, that she deemed herself as having no longer any issue of boundary to settle with Lord Baltimore: and, accordingly, at a grand assembly held at James City by prorogation from the 10th March, 1655, to the 1st December, 1656, it was ordered: "That letters be sent unto Col. Samuel Matthews and Mr. Bennett, that in respect the difference between us and the Lord Baltimore, concerning our bounds, is as far from determination as at first, they desist in that particular until further order from this country."

They wisely desisted, knowing, doubtless, that the question of boundary would or could probably be settled without further controversy with Lord Baltimore. And so far as the Potomac and its islands and shores are concerned, its boundary was settled by—

VI.

The grant of the Northern Neck of the colony of Virginia lying between Rappahannock and Potomac rivers.

A petition, dated July 28th, 1639, addressed to the lords commissioners for foreign plantations, by the governor and company of London for the plantation of the Somer isles—now Bermuda isles—see map of 1763, (see No. 56, State papers, colonial, vol. 10, No. 30, with inclosure—shows that company was incorporated about the year 1621, and the inhabitants were not able to subsist there, and sought another place. That an agreement had been made between the company of Virginia and the petitioners, when the latter purchased the Somer isles from the former; that the petitioners should receive a large proportion of land in Virginia, and they prayed for a grant of land situate and being betwixt the two rivers of Rappahannock and Patowmeck.

This petition shows that the Northern Neck, as it is now called, was not then inhabited by English subjects, and that no grant thereof "had yet passed to any." This, with the inclosed paper, was submitted to the lords commissioners on the 1st August, A. D. 1639.

Then, August 3rd, 1663, came a letter from Charles II. to the governor and council of Virginia, reciting that he had granted to Henry Lord Jermine, Earl of St. Albans, and to Ralph Lord Hopton and others, in the first year of his reign, (he never counted the years

of the commonwealth or Cromwell, and therefore he meant in 1649, '50, or '50, '51,) "all that tract, territory or portion of land in America, bounded by and within the heads of Tappahannocke alias Rappahannock and Quiriough or Potomac rivers, the courses of these rivers, and Chesapeake bay, together with the rivers themselves, and all the islands within the banks of the said rivers." And it recites that the Earl of St. Albans, Lord Berkeley, Sir Wm. Morton and John Fritheroy, assignees of the said Lord Hopton, being the surviving patentees and parties interested, had granted and demised to Sir Humphrey Hoke, Knt., and others, the said tract, or territory, for a certain number of years, &c., &c.; and reciting that his letters patent had miscarried, and ordering the governor, council and burgesses of Virginia to give these patentees aid and assistance. See the De Jarnette State papers, No. 80, Colonial-Virginia, 59, No. 19, August 3rd, 1663.

And in the Public Record Office of England, Chancery Patent Roll 21, Car. II., dated May 8th, 1667, came the patent or grant from Charles II., confirming "letters patent under the great seale of England, bearing date at St. Germines, the 18th day of September, in the first year of our reigne," unto "Ralph Lord Hopton, Henry, Earl of St. Albans, &c., &c., their heirs and assignees forever, all that entire tract, territory or parcell of land, situate, lying and being in America, and bounded by and within the head of the rivers of Tappahannock, alias Rappahannock and Quiriough or Pattawmack rivers, the courses of the said rivers as they are commonly called or knowne by the inhabitants and description of those parts and Chesapeake bay, together with the rivers themselves. And all the islands within the banks of those rivers. And all woods, &c. This recites the terms of the grant to Lord Hopton made in the 1st year of Chs. II. reign, in 1651, and then recites that whereas the said Ralph Lord Hopton, John Lord Culpeper, Sir Dudley Wyatt and Thomas Culpeper, being all since dead, and the said Ralph Lord Hopton having in his life time, by good and sufficient conveyance and assurance in the law convied and assured all his estate and interest in the said p'messes unto John Fretheroy, Esq., and his heires, all the said tract, territory, and portion of land," &c.

"And whereas the said Henry Earle of St. Albans, &c., by their deed, &c., bearing date the nyne and twentieth day of June now last past, &c., have granted and surrendered to us the said tract, &c., with the aforesaid letters, patents to be cancelled, to the intent that we

would be gratiously pleased to grante them new letters pattents thereof, &c., &c. : Now know ye, that we for, &c., have granted and confirmed, &c., unto the said Earle of St. Albans, John Lord Berkeley, Sir William Morton, John Fretheroy, their heirs, &c., all that entire tract, territory or parcel of land, situate, lying and being in America, and bounded by and within the head of the rivers of Tappahannock alias Rappahannock and Quiriough alias Patawmack river—courses of said rivers, &c., together with all the rivers themselves and all the islands within the banks of those rivers, &c."

And after full and complete proprietary rights and powers are granted, and a covenant to supply all future defects, it proceeds :

"Provided always, &c., that these presents or anything herein, &c., shall not extend or be construed to extend to infringing, make voyd, or otherwise prejudice any contracts or grants, &c., whatever, heretofore made or granted by the governor or governors and council of Virginia, of the premises, &c., &c., made before the 29th day of September, in the 13th year of our reigne."

And these grantees were prohibited from acting or intermeddling in the military affairs or forces in the territory, "or with the government or command of any of the castles, forts, &c., thereof, without the order, authority and command of the governor and council of Virginia for the time being, but the same shall remain, continue and be in the governor and council of Virginia, &c.; and that the governor, councill and assembly of Virginia for the tyme being shall have full power and authority to lay any tax and impositions in and upon the said territories hereby granted."

In a word, these grantees and the inhabitants in this territory were "in all things made subject and obedient to such lawes and constitutions as are or shall be made by the said governor, council and assembly for or concerning the said colony or gov't thereof," &c.

This grant was made by writt of privy seal, at Westminster, the 8th day of May, the one and twentieth year of the reign of Charles II., counting from the death of Charles I. would be 1668–69. Also see No. 94 of the De Jarnette papers, dated "At Whitehall," November 19th, 1675.

"Present—The king's most excellent majestie in councill."

The lords of the committee on foreign plantations presented to his majesty in council a report touching a grant to be past unto his majesty's subjects of Virginia. The petition of Francis Morryson and

others, agents for the governor, council and burgesses of the country of Virginia and territory of Accomac.

The report of the committee approved the petition, and it was confirmed by the king in council, November 19th, 1675, authorizing the governor, council and commonalty of Virginia to purchase the lands, &c., contained in grant to the Earl of St. Albans, &c., &c.

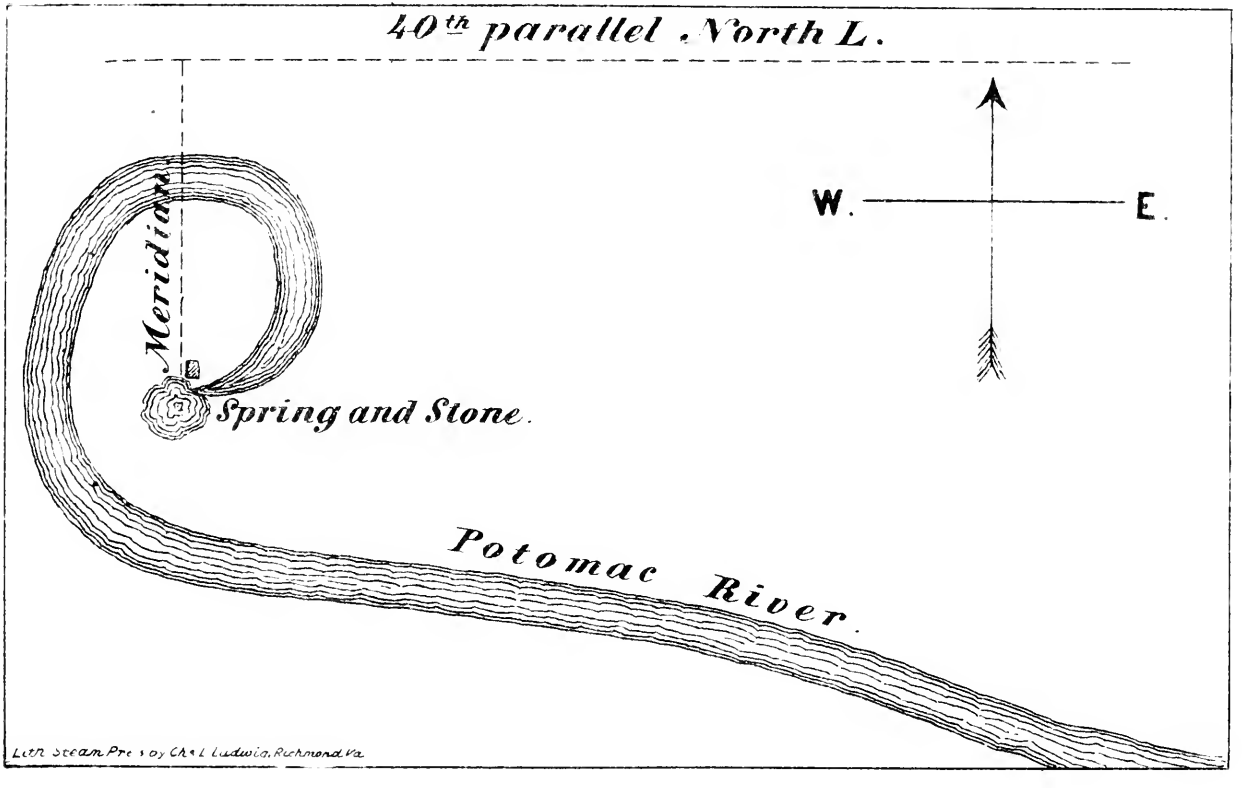
Under these and various other papers, and laws passed to that end, the colony of Virginia became possessed of the entire territory between the Rappahannock and Potomac rivers, embracing all the islands and waters of said rivers, and has ever since exercised jurisover the same.

Not only by successful revolution and sovereign power, de jure et de facto, was Virginia, by the treaty-making power itself, restored to her ancient limits, but her boundary and jurisdiction on the Potomac river was fixed by royal grant as well as by the articles of surrender to the commonwealth.

Lord Fairfax fixed the initial mark of boundary at the head spring of the North branch of the Potomac under his title, and prevailed against the lord proprietor of Baltimore, who claimed not only the whole of the Northern Neck of Virginia, but to the South bank of Acquia creek. See the map of his own "achievement," with his coat of arms, in Ogleby's History. And Lord Fairfax, under Virginia laws, always claimed the Potomac river and its islands, and Virginia always exercised jurisdiction in various ways over them, as will be hereafter shown. See the surveys by Lord Fairfax, hereto appended.

Indeed, it was always a matter of dispute whether the original grant to Lord Baltimore could reach as far West as the head spring of either branch of the present Potomac. The river to which the name of Potomac was given was the Quiriough. That river, at the date of the grant to Lord Baltimore in 1633, was not known higher up than its falls; and the country West of the Blue Ridge was not explored, certainly not settled, for a century after that date. See Kercheval's History of the Valley of Virginia. The North branch of the Quiriough was the Cohongaroota, and the South branch was called the Wapopocomo. If the name Potomac in the Baltimore grant meant the Quiriough, as undoubtedly it did (see the alias named in the grant to Lord Hopton), then the line of Maryland running by the line of 40° N. L. until it came to the meridian of the most Western head spring of the Quiriough would have to stop far East of the meridian of the head spring of the Cohongaroota. But

Lord Fairfax and Lord Baltimore fixed the boundary by the Fairfax stone, as found by Michler. And Michler's report showed a curious result of survey in demonstrating, perhaps, what the words "ulteriorem, flumines, ripam," in Baltimore's grant, meant. Michler, in making his survey, could not of course begin to run a line South from the parallel of 40° N. L. until he first found the head spring, the meridian of which he was to run. He searched for and found the spring and stone marked by the Fairfax initials, and then run its meridianal line North until he crossed or came to the parallel of 40° N. L. In doing so he found that within four or five thousand yards North of the stone and spring his meridian line struck the Potomac river, there running Northwest. Instead of running South from the parallel of 40° to the spring, he was running North from the spring to the parallel—exactly the reverse of the course required by the grant. The grantor, as it were, standing on the parallel of 40°, gave a line inclining South from the meridian of the spring to the ulterior bank of the river from his stand-point on the parallel. The river running there Northwest and then deflecting West and South until it takes its general course Southeast, the ulterior bank of the river was, geographically, the left bank thereof. The line thus mathematically was fixed on the North side of the Potomac. Any one can see this by the simplest diagram, thus—


40th parallel North L.
W.
E.
Meridian.
Spring and Stone.
Potomac River.
Lith Steam Press by Ch.s L. Ludwig, Richmond Va.

The ulterior bank of the river is the South side where the meridian of the spring cuts it, but it is the North side in the general course of the river. But the reply to that is, that the line was to run to Cinquack, and Cinquack is placed on Smith's Map on the South side of the river. What did Cinquack mean? A point of place, a wigwam, a chief's residence, or a territory? Certain it is that by the charter the line of the Western shore of the bay was to terminate where the river disembogues into the bay, and there is no place on Smith's Map called Cinquack there. The name Cinquack is put on Smith's Map at or near the mouth of the Great Wicommico, some five or ten miles South of the mouth of the Potomac river, or South of where it disembogues into the bay. Again, we know that Smith misnamed several rivers and places, as, for example, he called the Pocomoke the Wycho on the Eastern shore (see record of Accomac county court in 1663 as to the true Pocomoke and Calvert and Scarbrough's report in 1668, showing where the Pocomoke was known to be in that day). But this is all mere curious speculation now, for whatever was the Potomac line under the grant to Lord Baltimore in 1633, it was changed by the surrender of the country in 1651, and the grant of Charles II. the same year confirmed, in 1668–9, to Lord Hopton and others. It was changed, if ever on the South side, to the North side of the Potomac by the most plenary power of both the commonwealth and the crown. At first the line on the Western shore may have terminated on the South headland of the Potomac where it disembogues into the bay; but after the restoration of Charles II., it terminated on the North headland of that river at the extreme Southeastern angle of Point Lookout. And this change, as will be shown hereafter, is still shown and proved by marks and monuments remaining yet on Smiths island in the Chesapeake bay. See depositions as to them.

VII.

And this brings us to enquire: how, when, and by what modifications of his old charter, or by what new charters, if any, was Lord Baltimore restored to his rights? He was certainly more than suspected by Charles Second of disloyalty to the crown, and that was certainly cause of forfeiture of any royal grant to him. See No. 142 De Jarnette papers.

The commonwealth had deprived him of the whole of his power and province, and restored it to the colony of Virginia. How much

did the grace, mere grace, of majesty restore to him? If his corporation was gone, did he have anything left but mere proprietary individual rights? He had to be restored to something. To what was he restored? It is utterly denied that the grant to Lord Hopton expressly placed under the colonial jurisdiction of Virginia by charter, was undisturbed by "quo warranto," or by king's bench, or by king. It remains unimpeached to this day, and is binding on both states. It is insisted that he was given back, and could be given back the parts of his original limits so far on the Western shore as to the North bank of the Potomac. The king, whilst Lord Baltimore's title was taken away under the sovereignty of the com'th, and Maryland was therefore under royal grant, gave the river Potomac, under the great seal of England, to Lord Hopton and gov'r and council and burgesses of Virginia. Nothing could undo that grant but the king's bench. The king, after the grant, could not of his own motion revoke it by giving it to another without the judgment of that court. Did the King Charles II. impose new conditions or new limits upon Lord Baltimore's grants? It is insisted he might do so, and even if that be an error of opinion, and the king might not be able to do so without his consent, yet did he consent, and take anew by his acceptance of any new terms, conditions and limits. If so, what?

We know that Lord Baltimore's grant was lawfully modified to a great extent, but how far, with his own consent, we are not informed. However that may be, and whether the onus of showing belonged to Maryland or Virginia, is not material, for we know—

VIII.

There has been a controversy respecting the boundary of the two colonies; and, in 1663, it was brought to a specific and pointed issue. The laws of conformity had pressed so hard in Virginia upon the Quakers and other non-conformists that they were driven on the Eastern shore, then called Accomack, to the North and West of the mouth of the Pocomoke. A glance at the map will show that river runs from the N. E. of the peninsula until it comes near to its mouth East of Cedar straits, and then it suddenly widens into a sound of considerable width; and the part of its North bank embraced by the lands of Little Annamessex river, between that and the Pocomoke sound, consists mainly of salt marshes, not then desirable for settlement, and then not easily accessible from Accomack. Being tol-

erated in Maryland, and not in Virginia, the refugees from Accomack congregated in the Little and Big Annamessex *territories* up to Marokin river. But 8 square miles of this territory claimed by Virginia was terra firma or arrable land, and it was inconvenient to be visited by any sheriff of Va. to collect taxes, or for any other purpose. Lord Baltimore's deputies seeing this, began to encourage this settlement and to grant patents in that region. No patents were sought by these refugees East of the Pocomoke river, and this on that side of the river no dispute arose after the year 1668 about boundary. Edmund Scarbrough, the surveyor gen'l of Va. in Accomack, was, with others, employed by the lord proprietor of Maryland to conduct settlements to the Annamessex rivers. Finding that he was aiding to strip his own colony of her territory and that his employment by Maryland was incompatable with his official duty to Virginia, he exposed the policy of Lord Baltimore to acquire that territory by settlement, and caused the final adjustment in 1668. See the Maryland records: 1st one labelled No. 3, state papers, council record book 1666–'68; 2d. The other labelled No. 4, state papers, council record book 1669, 1673.

These books, with others of the archives of Maryland, are now in the safe-keeping of the Maryland historical society in Baltimore, and were adduced by the commissioners on the part of Maryland.

The first shows the disturbances about settlements on the Eastern shore of Chesapeake bay, and the correspondence of the governments of the two colonies respecting boundaries and the encroachments of settlements.

The second shows a full and final settlement of the whole question of boundary and patents on the Eastern shore, at Big and Little Annamessex rivers and Pocomoke sound, and thence to the Atlantic ocean by a right line East.

Edmund Scarbrough was a man of great ability and energy; was a man of large means, being a considerable patentee from Virginia, and perhaps Maryland too, and had actually been in Lord Baltimore's service, employed by him with others to cause the refugees and others from Virginia to settle down as low as Little Annamessex; but Scarborough found the settlers under the lord and proprietary of Maryland encroaching on the territory of the colony of Virginia, of which he was surveyor general, on the Eastern shore of Virginia, from the Wicommico river North to the Pocomoke sound South. This caused the collisions between him and Mr. John Elzey in 1663, and the cor-

respondence between the governors of Maryland and Virginia. Maryland sent commissioners to James City to confer on the matter and to adjust it. The 9th act of the general assembly of Virginia in 1662 was "to prevent assemblies and conventicles of Quakers," &c. The 68th, 69th and 70th, of the same year, provided for—1st, grants of land; 2dly, deserted land; and 3dly, seating of lands; which explains the reason of patents for the same lands to different persons. Act 78th of the same year provided for what was afterwards called processioning of lands; to be done by view of certain select neighbors of the boundaries. There were no neighbors *at Annamessex loyal to Virginia* West of Pocomoke. They all claimed the protection of Lord Baltimore against the intolerance of the established church in Virginia. For this reason there could be no processing in all Annamessex. But the refugees never settled East of the Pocomoke, because it brought them in neighborhood of their persecutors, and accordingly three loyal neighbors could be selected who were willing to do the marking and remarking boundaries East of the Pocomoke. Thus there was no processioning on the West, whilst it was regular on the East side of that river. This left the way open to the encroachments of Maryland settlers.

This assemblage of Quakers and other refugees from Virginia, in Annamessex, and controversy respecting encroachments on the limits of the Virginia colony, caused the grand assembly, held at James City, September 10th, 1663, 15th year of Charles II., to pass act 2d, "an act concerning the bounds of this colony on the Eastern shore":

"His majesty's interests on the Eastern shore of Virginia, together with some concernments of Lord Baltimore's, coming into consideration of the right hon. governor and council and burgesses of this grand assembly, they, pretermitting for the present some other of his majestie's concerns of lands until a fitter opportunity, do think fit for the present to enact, and be it further enacted, by the said right honorable, the governor, council and burgesses of this grand assembly, and the authority thereof, that publication be made as soon as possible by Col. Edmund Scarbrough, his majesty's surveyor general in Virginia, commanding, in his majesty's name, all his inhabitants of the Eastern shore of Virginia, from Watkins point Southward, to render obedience to his majesty's government of Virginia, and make payment of his majestie's rents and all publick dues to his majestie's colony of Virginia.

"And whereas it has been controverted by some ignorant, ill dis-

posed persons where Watkins point, the Lord Baltimore's Southernmost bounds on the Eastern shore, is situated, this grand assembly, by the care and special enquiry of five able selected surveyors and two burgesses, and on the due examination thereof, conclude the same place of Watkins point to be the North side of Wicocommico river on the Eastern shore, and near unto and on the South side of the straight Limbo, opposite to Patuxent river; which place, according to Captain John Smith and discoverers with him in the year 1608, was so named, being the said Lord Baltimore's bounds on the Eastern shore, within which bounds his majestie's subjects which now are seated, are hereby commanded to yield due obedience at their perils. And in case the said Lord Baltimore's lieutenants or deputies shall not be fully convinced of his or their actual or pretended intrusions, this grand assembly of Virginia, in due obedience, making this particular part of Virginia their present care on his majestie's behalf, do engage and command Col. Edmund Scarbrough, Mr. John Catlett and Mr. Richard Lawrence, or any two of them, whereof his majestie's surveyor general to be one, that upon convenient notice and assignment of time and place, at Monnokin or any other part of his majestie's country of Virginia on the Eastern shore, they, or any two of them as aforesaid, shall give a meeting to the Lord Baltimore's lieutenants or deputies, or his or their substitutes as aforesaid, the account whereof to be returned to his majestie's governor and council of Virginia for debate and determination thereof. And in the meantime, all inhabitants on the Eastern shore as aforesaid are required, in his majesty's name, to conform due obedience to this act of assembly.

"Be it also enacted, That the surveyor general of Virginia aforesaid is hereby commanded and authorized to improve his best abilities in all other of his majestie's concerns of land relating to Virginia, especially that to the Northward of forty degrees of latitude, being the utmost bounds of the said Lord Baltimore's grant, and to give an account of his proceedings therein to the right honorable governor and council of Virginia."

This act brings us to consider the charter to Lord Baltimore in order to explain why Virginia claimed as high up the bay as near to the Patuxent. That charter as read inattentively calls for a "Watkins point with a Wycho river on the West."

Edmund Scarbrough executed this law with "fourty horse" taken with him "for pomp of safety." See his report hereto appended, characteristic alike of the man, of the times, of the people of Anna-

messex, and of the nature of the controversy. It brought him into collision with Elzey and others, and he put the "broad arrow" over their doors.

More patents than ever, began to issue from Lord Baltimore to settlers as low down as Pocomoke sound, and the court of Accomack took up the issue and vouched that the Pocomoke was not the Wycho, and never had been so called. And they were right. See Augustine Herman's Map. It was urged by Virginia that if that river was the Wycho it had no Watkins point on the East of it, and if there was a Watkins point on the East of it, it was not the Wycho. See the records of the court of Accomack appended to Scarbrough's report.

The description in the affidavits of this record of Watkins point exactly corresponds with the initial point adopted afterwards by Scarbrough and Calvert. It is just as far North of Cedar straits as the eye can see in a clear day—a "*spiral point;*" but to understand this part of the line we must refer to

IX.

The Charter of Maryland.

In the British State Papers, colonial, vol. 43, No. 240, is a "memorandum concerning Maryland. It describes Virginia as a tract of land lying from 45 to 34 degrees N. L.—that it was divided into two colonies, the one lying from 34 to 40 degrees, the other from 40 to 45 degrees, and it proceeds to state, that in 1632, "Cecil Lord Baltimore, upon suggestions that there was a certain tract of land in America not inhabited by christians, (as appears by the preamble,) obtained that charter whereby Maryland is now held, and for the possessing himself thereof used great violence in driving away such of the people out of that part formerly called Virginia, as would not submit to his authority, &c. See DeJarnette papers, No. 137. This confirms the paper already cited, headed "Considerations, &c.," of Lord Baltimore's patent, which states that he did represent to the king that the country was settled by salvages—the country of the 100 miles apart between the Plymouth and the London Co. settlements, between 38° and 40° N. Lat. He obtained his charter and the territory is described by the following, and what seems to be the best translation of it :

"All that part of the peninsula or chersonese lying in the parts of

America between the ocean on the East and the bay of Chesapeake on the West, divided from the residue of the same by a right line drawn from the promontory or headland called Watkins point, situated near the bay aforesaid, near the river of Wighco on the West, unto the great ocean on the East, and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lieth under the 40th degree of latitude North of the equinoctial, where New England is terminated; and all the tract of that land within the metes under written, (to wit,) passing from said estuary called Delaware in a right line, by the degree aforesaid, unto the true meridian of the first fountain of Potomack, thence verging towards the South, to the further bank of the said river, and following it by the Western edge where that looks to, or (inclines to) the South, unto a certain place called Cinquack, situated near the mouth of the same river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place called 'Watkins point.'"

On the words of this grant it will be observed,

1. It provides for the boundaries on the Eastern shore of the Chesapeake.

2. For those on the Western shore of that bay and for the closing line between the E. and W. shore.

3. The part granted was to be divided from the residue of the peninsula by *a right line.*

4. That line was to be drawn *from* the *promontory or headland called Watkins point.*

5th. That point was situated near the bay aforesaid (near the river of Wighco or Wycho) on the West.

6th. The *right line* thus drawn from that promontory on the West was to run "unto the great ocean, the Atlantic, on the East."

7th. That line thus run was to be the Southern boundary of the grants to Lord Baltimore on the Eastern peninsula or chersonese of the Chesapeake.

A dispute arose about where the true Watkins point was, which culminated in the act of Virginia of 1663, the appointment of 5 surveyors and two burgesses, with the surveyor general at their head, to demand obedience to the royal government of Va. as high up as the Limbo (meaning strait), now called Hoopers straits, to the only promontory on or near a river Wighco on the Western side of the Eastern shore.

Smith mistook the Pocomoke for the Wighco, and why? Because, as his map shows, he thought he found King Wighcocomoco's house on its bank, and it was his wont in many instances to name the great waters, such as bays and rivers, after their kings. King Chesapeack, at the site of what is now called Hampton Roads, in Princess Ann co., Virginia, gave the name to the bay. Powhatan, high up the James, to that river. Smith gave the name of King Patowomeck to what is well known to have been called by the Indians the Quiriough. It was for that reason that the maps which Lord Baltimore caused to be "achieved" for Ogilby's History and Herman's Map, which he vouched to be accurate, have his bounds dotted on the South side of Acquia creek, it being what *Smith* called the Quiriough. Smith laying that branch down as the "Quiriough," and the Quiriough being what was called and meant by Potomac, he claimed South to the head of the branch now coming from the West and emptying into the Southern bend of the Angemoy reach of the Potomac river. See Nos. 96 A and 96 A of the Dejarnette papers. Ogilby's History and Map of Maryland, and also Augustine Herman's Map. There is also the Susquahanaugh, which Smith named after its king. Thus from the head to the mouth of the bay the principal rivers and bay itself were named by this first explorer after the names of the chief Indian kings. But Smith called several rivers and points by English names, as Gunters harbour, Smiths sales, Peregryns mt., at the head of the bay, Willowbys river, Smalls point, Sparkes point, on the Western shore North of the Potomac river, and Barnes point, Winstons isles, Mumfords point, Russells isles, Limbo, Watkins point, Keals hill, on the Eastern shore. Four of the points on the Eastern shore were named after four of his men on the expedition, two, we are told, were North of the Limbo (Hoopers straits), and two, Watkins and Reades points, were South of that strait. He lays down both of these points South of Limbo, and neither as a mathematical point made by the extreme of a neck or promontory or tongue of land, but both as a neck or promontory or headland or tongue of land projecting for some distance into the waters where they lie from the main land. He lays down Reades point or promontory or neck on what he calls the Wighco, at its mouth, where it disembogues into its sound. Watkins point he lays down on the neck or tongue or geographical point found between what is called Big Annamessex and the Pocomoke bay or sound. Maryland claimed to go to the extreme of the point South, because it was on the Wighco. Virginia claimed that it was on the Wighco,

but the Pocomoke was not the Wighco; but that the Wighco was further North, where it is now acknowledged and laid down on all the maps. Maryland argued whether the Pocomoke is the Wighco or not, there, identically, on the Pocomoke for the Wighco, or on the Wighco for the Pocomoke, Smith laid down a place which he called by an English name, and he could not mistake about that name however he may have mistaken the Pocomoke for the Wighco or any other Indian names. He named that name himself. To this, Virginia replied: two natural objects are named as guides of the location of both—a Watkins point near a *river Wighco* on the West. If the Pocomoke had a Watkins point near it, the Watkins point there had no Wighco near it, and the river was the major natural object to control bounds. She knew there was a Wighco, and but one Wighco river on the peninsula East of the bay, though there are several Wighcos on the Western shore. The Wicocommico, emptying into Monie bay (mouthing near Nantiquack, now Nanticoke river), true had no Watkins point on it, but no Watkins point laid down by Smith had any Wighco near it. The Wicocomoco, mouthing through the Limbo, was nearer to Mumfords point. On this ground Virginia sent her Scarborough expedition to the disputed territory in Annamessex in 1663, and to show how Smith mistook Indian names or misapplied them, he called the river mouthing at Mumfords point the "Rapahannock river," when no such name was ever known at all by the English settlers at any time on the Eastern shore of the Chesapeake. But there is one error apparent in the map of Smith, which trigonometry and astronomy detect. His parallels of latitude are laid down not less than 20 miles too far South. All the Russell isles are placed North of 38° N. L., and Watkins point is laid down North of that parallel too. Would Maryland consent to run a line to any point North of that parallel then or now? We will see what her response to that question was in several instances. Lord Baltimore had consented and acknowledged to the parallel of 38° as his true Eastern shore boundary on the South. See his answer as to his bounds, adopting Augustine Herman's Map, which, it is believed, is the original of Ogilby's Map, furnished by Lord Baltimore himself, having his coat of arms printed on it, and said to be his own achievement on its face. If Maryland goes by the map of Smith, she will not reach the 38th parallel; if she goes by Herman's Map, she will be exactly on that parallel on the Eastern shore. But it is idle to be exposing this confusion from early maps, or this conflict of claiming the Watkins point by Smith and the par-

allel by Herman, when both were wrong, and when the 38th parallel divides the mouth of the Potomac exactly, and is the exact equipotent of the line which was run by the colonies in five years from these disputes of 1663, and this brings us to

X.

The line run by Philip Calvert and Edmund Scarbrough in the year 1668.

The lord lieut. of Maryland continued to grant patents just at this time from 1662, and the colony of Virginia being resolved to bring the inhabitants of the disputed territory into subjection and obedience, and they being refugees from intolerance, and dreading to come again under the oppression from which they had fled for the sake of religious freedom, danger of a serious collision between the Royal Government of Virginia and the settlers on the Annamessex lands became so threatening, that the governor of Maryland invoked the co-operation of the authorities of Virginia, and sent an embassy to James City to complain of wrongs, and to arrange some mode of adjusting and settling the whole controversy in respect to boundary and titles to lands. In book of MS., labelled "No. 3, State papers, Council Record Book," dated from 1656 to 1668, of the Maryland archives, the preliminary correspondence and proceedings will be found. The result was that Philip Calvert, the nephew of Lord Baltimore and the Chancellor of Maryland, on the part of Maryland, and Edmund Scarbrough, surveyor general of Virginia on the part of Virginia, were appointed commissioners to settle the whole question. They were instructed to "*meet upon the place called Watkins point, and thence to run a divisional line to the ocean sea, &c.*" This instruction they obeyed, and on the 25th day of June, 1668, they made their report under their hands and seals. They reported:

1st. *That after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay,* they have, and do conclude the same to be Watkins point, from which said point, so called, we have run an East line agreeable with the extremest part of the Westermost angle of the said Watkins point, *over Pocomoke river,* to the land near Robert Holstons, and there have marked certain trees which are so continued by an East line running over Swanseacute creek into the marsh of the

sea side, with apparent marks and boundaries, which by our mutual agreement according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern Shore of Chesapeake bay." And there is no doubt, and it is now admitted by the present commissioners of Maryland, who have acted as commissioners on these bounds heretofore, that these articles of agreement, and this settlement of boundary, as reported, were approved and confirmed by Lord Baltimore, and they certainly were by the state of Virginia. And though the line was thus definitely and distinctly marked and acquiesced in and recognized from 1668, and had been known by its apparent marks, which still exist, and have existed for 184 years, yet, as soon as the oyster fisheries became valuable and began to yield revenue to the state having jurisdiction over them, the county authorities of the state of Maryland on the Eastern shore began to encroach first upon the territory of Smiths island, and then upon the waters of Tangier sound. See Bradshaw's deposition. And though the question has been since settled by adjudications in the courts of Somerset county, Maryland, as late as 1854, in favor of the line claimed by Virginia, (see records of Somerset county Maryland court,) yet Maryland still persists in claiming territory and waters far South of the line established in 1668, on the joint and sealed and confirmed agreement of the commissioners Calvert and Scarbrough. It is inconceivable how the boundary line on the East side of the Chesapeake bay, between Maryland and Virginia, thus and then established, can be disputed or doubted.

1st. By the *original grant of the Province of Maryland the line on the Eastern shore was to be a right line.*

2d. That right line was to be drawn from "the promontory or *head* land called Watkins point, situate upon the bay aforesaid," (the bay of Chesapeake,) near the river Wighco on the West, unto the main ocean on the East.

XI.

The articles of agreement between Philip Calvert and Edmund Scarbrough show—

1st. That they were men of considerable rank, and both high officials of their respective provinces. The one, chancellor of Maryland, and the other his majesty's surveyor-general of Virginia.

2nd. That each of them were acting under full authority, the one "deputed by the hon. the governor of the province of Maryland to *treat*

and *conclude* upon the bounds of the said province," and the other authorized and *commanded* to lay out the bounds of Virginia.

3d. That in order to enable the Surveyor-General of Virginia to execute the commands of his Royal Majesties commission to him "setting out the bounds of Virginia, with a reference to his majesty's honorable governor and council of Virginia, his majesty's honorable governor and council had by letter moved the honorable the Lord Baltimore's lieutenant-general of Maryland, to appoint some fitting person to meet upon the place called *Watkins point* with the surveyor-general of Virginia.

4th. And thence to run the divisional line to the ocean sea, &c.

Such were their full powers, and such their clearly expressed instructions. They were to "meet together *upon the place called* Watkins point, and *thence* to run the divisionall line to the ocean."

What did they do? Their report clearly shows:

1st. "That the honorable Philip Calvert, Esq., chancellor of Maryland, being fully empowered by the honorable lieutenant-general of Maryland, and Edmund Scarbrough, his majesty's surveyor-general of Virginia, first took a *full and perfect view* of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay."

2nd. "That they concluded the same to be Watkins point."

3rd. That from said point so-called, they *had run* an East line.

4th. That "they had run an East line from that point," agreeable with the extremest part of the Westernmost angle of said Watkins point.

5th. That they run said East line from the extremest part of the Westernmost angle of Watkins point "*over Pocomoke river*," not up it and then to either bank, but *over it*.

6th. That they run this East line from said point "to the land near Robert Holston's."

7th. That there, near Robert Holston's, they had *marked certain trees*.

8th. That they had so "continued their marks by an East line."

9th. "Running over Swanseacute (Swanseagut it ought to be) creek into the marsh of the sea side."

10th. "With apparent marks and boundaries."

11th. "Which line, by their mutual agreement, according to the qualifications aforesaid, was to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay."

12th. And "in confirmation of their concurrence" they conclude by adding "we have set to our *hands and seals*, this 25th day of June, 1668."

(Signed) PHILIP CALVERT. [Seal.]
EDMUND SCARBROUGH. [Seal.]

And these bounds by this East line from Watkins point, thus ascertained, and the very part of an angle of it specified, from which the line was run to the ocean sea, was received by both provinces at the time, and ever since until lately, as the bounds of Virginia and Maryland on the Eastern shore of the Chesapeake bay. The archives of Maryland and her Somerset and Worcester county records show it, and her best historians attest it. McMahon, in his history of Maryland, after relating the disturbances between the two provinces about settlements on the Eastern shore (vol. i., pp. 20–21, edition of 1831, by Lucas, &c.), says:

"The entreaties and remonstrances of the former (the governor of Maryland) were at last crowned with success, and commissioners were appointed—viz: Philip Calvert on the part of Maryland, and on the part of Virginia its surveyor general, Edmund Scarbrough, who were empowered to determine the location of Watkins point, and to mark the boundary line between the two colonies running thence to the ocean. By them this duty was fully discharged on the 25th of June, 1668, and in consummation of it certain articles of agreement were drawn up and signed by each of them, on behalf of their respective governments. In one of which they designate the point of land made by the North side of Pocomoke bay and the South side of Annamessex bay as 'Watkins point,' and the divisional line between the two colonies to be an East line run agreeably with the extremest part of the Westernmost angle of said Watkins point over Pocomoke river, and thence over Swanseacute creek into the marsh of the sea side, with apparent marks and boundaries."

Again: John Kilty, register of the land office for the Western shore of the state of Maryland, and author of a book entitled "Landholders' Assistant and Land Guide," being an exposition of original titles, &c., published by G. Dobbin & Murphy at Baltimore in 1808, p. 164, says:

"The proprietary governor, claiming the beginning of his patent where it was afterwards acknowledged to be, and finding that settlements *had been commenced in that quarter under the authority of*

Virginia, commissioned John Elzey and two other persons to repair to the place and grant warrants, under particular and favorable conditions, to such as would take them. On the arrival of these commissioners, and notice of their errand, a demand was made by Edmund Scarbrough, surveyor general of Virginia, that they should acknowledge obedience to his majesty as being out of Lord Baltimore's jurisdiction, and he proposed at the same time the appointment of commissioners to determine the situation of Watkins point. Elzey and his associates paid no regard to this proposition, but continued to fufil *the views of the proprietary by encouraging surveys and settlements under his patronage.* The dispute was at length terminated by Philip Calvert, chancellor of Maryland, and the above-named Edmund Scarbrough, appointed commissioners for the purpose, who, on the 25th June, 1668, being *met on the spot*, signed two instruments of agreement, by one of which they determined the point of land made by the North side of Pocomoke bay and South side of Annamessex bay to be Watkins point intended in Lord Baltimore's charter, and the proper divisional line between Maryland and Virginia to be an East line run by them 'agreeably with the extremest part of the Westernmost angle of the said Watkins point over Pocomoke river to the land near Robert Holston's,' where, say the commissioners, 'we have marked certain trees, which are so continued by an East line running over Swanseacute creek into the marsh of the seaside, with apparent marks and boundaries.' By the other instrument they adjusted everything that concerned the rights and interests of those patentees or settlers whose situations were changed by the settlement of said divisional line."

Thus what Calvert and Scarbrough said and did A. D. 1668, Maryland's own register of original land-titles vouched and admitted in 1808, and one of Maryland's brightest jewels, as well as jurists, John V. L. McMahon, of the Baltimore bar, among the most illustrious, vouched as late as 1831, just before or about the time when the dredging for oysters became so valuable as to make the Annamessex people begin to doubt, and start new and old traditions about "where is Watkins point"; and it must be remembered, too, that whilst McMahon admitted that Watkins point was finally and fully ascertained in 1608, and that an East line was run then from a defined and specified part thereof on the Eastern shore to the ocean, there was not a son of Maryland who opposed the claim of Virginia to the North shore or bank of the Potomac river on the Western shore with

more zeal and knowledge than he did. He was exceedingly jealous of Maryland's rights, was devoted to the religion of her founders, familiar with her archives, a master of her laws, and her strong and eloquent champion of boundaries. He had questioned every inch of land, water, and argument claiming them on the Potomac, but he was too fair and candid an historian to contradict Maryland's own acts and records respecting the Eastern shore boundary.

See also McMahon's Maryland, page 91, touching the bounds of Somerset county, Maryland. See also Bosman's History of Maryland, vol. 1, p. 247–8–9, and note and p. 262. There could not be a report of commissioners on any survey more in obedience to the requirements of the case, more in conformity to the instructions of the joint authorities under which they acted and more exact in defining every particular of their initial point, of the points passed in right line from that to the extreme shore of the East, of the natural objects it touched, and its place of terminus. See De Jarnette papers No. 22. In one of the translations of Lord Baltimore's charter it is written thus: "By a right line drawn from the *promontory* or cape of land called Watkins point (situate in the aforesaid bay near the river of Wighco) on the West."

By putting the words in brackets as here, all confusion is cleared up; the meaning of the charter unmistakably is "Watkins point on the West of the peninsula situate," &c. The line then was clearly to run from West to East. It had to run from West to East from that point "over Pocomoke river." It was marked by apparent marks and boundaries, "numbering upwards of thirty still remaining, any two of which identify and verify it for its whole course. If its initial point, the part of Watkins point which was its Westernmost angle, was entirely washed away, the still apparent marks and boundaries demonstrate its course with mathematical certainly and precision. If it was a due East course, then one single mark enables us to give it precise location for its whole length. No matter what course it was run; "if it was a right line," then any two marks on it will determine its course. If the initial point don't now exist to show where the line began, the line exists to show where the initial point was in 1668. But Watkins point does exist, and the part of it then named from which the line was run. The Westernmost angle then is still not only pointed to by the marks and boundaries of the line which was run, but *it is still the Westernmost angle of Watkins point.* Watkins point is not only the initial point of the line on the Eastern

shore, but it is the initial point of the whole boundary line of Maryland, and it is both the initial and closing point of all the lines between Maryland and Virginia. No matter which way the line run after running up the Delaware to the 40th parallel, after passing West on that parallel, after running South on the meridian of the first fountain of the Potomac river, after striking either bank of that river, right or left, and running down to either Cinquack at Smiths point or to Point Lookout," it had to close at Watkins point. Now, it is reasonable, not to say reputable, to suppose that two provinces and two states, like Maryland and Virginia, in all the time of their colonial and sovereign existence never found and agreed upon the initial and closing point of their divisional lines? So that it can be certainly identified and verified now. It is two preposterous to be presumed, and if pretended merely it can be disproved.

Calvert and Scarbrough strictly obeyed their instructions—they ran a "right line" *straight*—geometrically "the shortest line that can be drawn between two points. A right line may be horizontal, perpendicular, or inclined to the plane of the horizon." It is said the line was not run due *East*. It *was not required by the charter to be so run*. It was to be drawn from the promontory or head land called *Watkins point*, near the river Wighco *on the West*, into "the main ocean on the East." They met on the place called Watkins point. They identified the location of "Watkins point" after "taking a full and perfect view of it to be: The point of land made by the "North side of the Pocomoke bay and South side of Annamessex bay." *That* they *concluded on the place itself* where Smith's Map lays it down:—not a mathematical point without length, breadth or dimensions, but a tongue or point of land, a geographical tract of country forming a promontory between Annamessex and Pocomoke bays. The Big Annamessex is the river meant, not the Little Annamessix, now, but not then mapped; the latter had no bay. The promontory is laid down by Smith in form very like as it is laid down now on the chart of the coast survey. It is in extent from North to South about ten miles in length, its general line of coast being nearly due North and South. Its whole surface pointing to Tangier bay or sound in a general Southwest course; and it is an average width of from five to seven miles—the terminus or Southern point of the promontory is now, as it was laid down in Smith's Map of 1628–9, at what is now called Cedar straits. The Little Annamessex river, as it is now called, a creek, not widening into any bay before it mouths into Tangier sound,

laid at the time of Smith's Map as it lies now, midway precisely between Big Annamessex bay's Southern headland and Cedar straits, the terminus of the promontory of Watkins point. And the North headland of Little Annamessex was, by Smith's Map, as it is now, the "*Westermost angle*" of the coast of the promontory of Watkins point. It is *the* promontory of Watkins point, and the only promontory of that point projecting into the Tangier bay. The point of the main land is not a "promontory" at all; it cannot be so called either in the language of navigation, geography or geometry. It projects into a shallow, narrow thoroughfare, not considerable enough hardly to be called a "strait," is veiled entirely by groupes of islands East, West and South of it, and not navigable except by small canoes at high tide.

The part of Watkins point which is its Westermost angle, taken by Calvert and Scarbrough, is a "head land," is a "point," is a "promontory" projecting from the shore "into the bay or other expanse of water," a small "cape" or tract of land "extending into the sea," or a lake or river *beyond the line of the shore*, and it can be sailed around and "doubled" by navigation. A promontory differs from a cape in denoting *highland*. Lowland projecting beyond the line of the coast into the sea may be a *cape* or *headland*, but it must be highland comparatively to be a promontory. In that sense even the North headland of Little Annamessex, the Westermost angle of Watkins point, as compared with the point at Cedar straits, is the "promontory" of the ten miles coast of Watkins point. All the land along that coast is marshy and flat, but this angle is high enough to be sandy, with some elevation higher than that at Cedar straits. But whether the most prominent part of Watkins point be the initial point of the survey or not, *it was made the part for the initial point.*

There the point started, not only for the reason that it was the Westernmost angle of the coast, but because it was midway the length of coast—it was fairest and most equal and just. They could not start a line from each and every part of a geographical point ten miles long—they had to agree upon a *part* of the point as the initial part for the line that had no breadth. If they began North, at Annamessex, they would wrong Maryland; if South, at Pocomoke, they would wrong Virginia. They therefore took for their initial point the North headland of Little Annamessex, on what is now called Janes island, midway exactly between Big Annamessex and Pocomoke bays.

And here it must be noted that they *then*, Calvert as well as Scar-

brough, *did not call the Pocomoke the Wighco.* Calvert is presumed to have known it was a misnomer by Smith, and that the true Wighco was North. They called the river, the North shore of which was the Southern bounds of Watkins point, Pocomoke ; and they knew that the Wighco was North of Annamessex bay, whose Southern shore was the North bounds of Watkins point. They were ordered and bound to run "*a right line.*" They *did,* by running, as they reported, an "East line," and were wonderfully accurate, for the times and instruments, in not varying from an East line but 15′ over what Virginia by law allowed in her surveys—5°. Calvert and Scarbrough varied but 5° 15′ from due East. See Michler's Report and Henning Stats. at Large.

And they stated expressly that they had run the line "FROM" Watkins point, and they specified the *part* of the point from which they had run it, viz: "the extremest part of the Westernmost angle of the same." And they futher report that they run this line—not up, nor on the shores of the Pocomoke *river* or *sound,* but "OVER Pocomoke river." This word is not "along," to run lengthwise, nor "*across,*" to run from side to side merely, but it is stronger, and expresses more than either. The line did not run "*along*" the right bank of the river and at a certain point run "across" the river, but it was run "*over*" the river, signifying that in this instance it was moving *from* the West and *over* the river to a place beyond the left or East bank of the river near Robert Holston's. To pass *over* a river is to pass over both banks as well as the water. Its root signifies motion, *arriving at* and *departing from,* and *to pass across and beyond,* whether above or on the surface, it always imports *excess.*

But there is a better test of the meaning of the commissioners than mere words. If they had started at Cedar straits—if that was their initial point—nowhere would "*a right line*" *run East from it have touched the Pocomoke river.* It would have intersected the open Pocomoke *bay* or *sound* from three to five miles *below the mouth of the river,* and would not have run over *the river* at all. Again: It was run expressly to a place near Robert Holston's on the East bank of the river. Now, even granting the Pocomoke bay was meant for river, then another test, more trying still, obstructs the claim of Maryland. How came the place on the East side of the river near Robert Holston's to be so far North of a right line run East from Cedar straits? That place, now easily identified, lies nearly Northeast from Cedar straits. This proves mathematically that if these commissioners ran

the part of a right line East to near Robert Holston's house, they could never have started at or anywhere near to Cedar straits. On the contrary, they expressly say that they run an East line from Watkins point "agreeable with the extremest part of the Westernmost angle" thereof. They could not run it from the whole, each and every part of Watkins point, for that would have run the broadest line ever known to the god Terminus between provinces. They agreed upon the midway Westernmost angle of the point, and from "*the point*" *agreeable with that part of it, i. e.*, from that extremest *part* of the Westernmost angle of Watkins point, they ran an *East* line "*over* the Pocomoke river" to the ocean sea, etc., etc. They expressed this distinctly, not only the "*part of Watkins point*" FROM which they run, but *the part of Pocomoke river* "TO" which they ran, viz: *to* the land near Robert Holston's. And "*there they had marked certain trees.*" They don't report that they there commenced to mark trees for the first time on the line, but that there especially they were particular "to mark certain trees," because it was there that the line "was run over Pocomoke river." They were particular there not only to "mark *certain trees,*" but to name the land where it was—near Robert Holston's. No preceding word or phrase negatives or asserts the fact that they did or did not mark other trees before arriving at the Pocomoke river; but the subsequent language, "which are so continued," implies that the whole line was *continuously* marked, by trees or otherwise. We have already shown a reason why, if marked, the marks were not preserved or were purposely destroyed: the want of "processioning" or renewal of marks at regular intervals of years, for want of "neighbors" loyal to Virginia, and owing to the aversion of the refugees from Virginia settled there to be subject to Virginia's laws of persecution and intolerance. But however that may be (this part of the line on the main land West of the Pocomoke river has not been searched for marks by the present commissioners), let it be admitted, for argument, that they *marked no trees* on that part of it; yet does that prove that there were no *other* marks of something else besides trees there? Was not the extremest part of the Westernmost angle of Watkins point itself a *mark*, a headland to begin with, more permanent and perdurable than marks on trees? Suppose there was not a mark between that and the "certain trees" marked near Robert Holston's, would that invalidate the line, or render its course uncertain even? Calvert and Scarborough say the "certain *trees* which are so continued," &c., not meaning the *trees* they there

marked were continued, but their marking of the trees was so continued to the sea side. Will not the line continued to be marked to the sea side show the course of the line West as well as East of the Pocomoke river? It does show its course West, and that is *direct* to the "extremest part of the Westernmost angle of Watkins point." But there was no necessity, and it was then, and is now, very inconvenient to mark from that angle to where the line crosses the Pocomoke river. The distance is only fifteen miles, and the line, nearly its whole course, passes over an immense body of mink and muskrat marshes. The whole area South of the line West of Pocomoke river down to the Pocomoke bay and river and West to the Tangier sound and Cedar straits, is but about thirty-two square miles, eight only of which is forest or arable land, and the remaining portion, twenty-four square miles, is marsh. Its extreme breadth is between the initial point of the survey and Cedar straits, and the shore of Pocomoke sound running Northeasterly from Cedar straits. The strip between the line and the sound narrows as you approach the mouth of the river to an average width of not more than a mile and a half. The estuaries at the mouths of East creek and Marumsco creek make up North to the line, and that of Ape's Hole creek runs up in half a mile of it. It is very doubtful whether there were at that day many if any obstructions to the line of sights for a survey the whole distance. There are but few now as compared with any other line of the same extent. From the Westernmost angle to James Tuft's house on Somers cove near Crisfield, is a distance of clear sight for three miles. Then commences some pine forests of secondary growth that, according to the topographical marks of De la Camp's survey of the line, continues for about two miles, and thence to Marumsco creek for six or seven miles the line is over marsh, and then begin the swamps of Pocomoke for about four miles. There are not five miles of distance on part of the line which can't now be run by the longest sights with the naked eye. Having the headland of Little Annamessex for a natural object to start by and to sight an East course by, there was no difficulty then, and there is none now, in running the line without a mark. The Westernmost angle of Watkins point and the crossing of the line over Pocomoke river could always easily by long sights determine where marks and monuments could be placed when required.

Whether this part was marked or not, except at the two termini, *there they at least were fixed;* and if marks were not placed there, there were marks placed on Smiths island corresponding to this line

deflected South of West at the angle of Watkins point towards Smiths point, under Lord Baltimore's grant, and afterwards deflected North of West, under Lord Hopton's grant, to Point Lookout. The first line cut the South end, and the last the North end of Smiths island nearly through, or at its great thoroughfare. See Michler's and De la Camp's surveys, and the depositions on the subject of the stones and stumps and other marks at Barnes point, near Troy island, in the thoroughfare, on Cow ridge, and on the Pitcraft patent, and at Drum point. The line was never actually run across the bay. Lord Hopton had no grant on the Eastern shore, but when the grant to him was confirmed to Virginia jurisdiction, that state of course claimed that the line closed at Watkins point from Point Lookout instead of from Smiths point. This accounts for two lines, one at each end of Smith's island, and the marks there, and for the confusion of traditions about them. But Maryland can not deny or dispute that Lord Baltimore's and Virginia's patents were both required to make Henry Smith's title to Pitcraft on that island complete for the whole and respective portions of that tract patented. This is sufficient to show that there was a divisional line on Smiths island, and if so, how could any line be drawn from Smiths point to Cedar straits and cut Smiths island? Drawn to the Westermost angle at James island, it cuts South of Horse hammock, and leaves all of Shanks and a large portion of Hog neck in Virginia; drawn to Cedar straits, it leaves all of Smiths island North in Maryland. An inspection of this diagram on the map of coast survey will reduce the problem to one of Euclid. Virginia has always claimed and possessed the Southern end of Smiths island; that is not denied. It is North and West of Cedar straits, and Smiths point is South of both Smiths island and Cedar straits; how then could a *right line* across the bay be drawn from Smiths point to Cedar straits and cut any portion of Smiths island? The problem would puzzle all geodesy. Smiths island was part of the Eastern shore, and was divided in no other way than by the imaginary closing line from Smiths point or Point Lookout to the Westermost angle of Watkins point. It was so divided by both of those imaginary lines, and at the South end the royal or state's jurisdiction was never denied, but mutually admitted by patents for the respective parts of the same tract of land which were in the respective colonies to the same patentee at the same time. Virginia granted her part, and Maryland her part, of Pitcraft to Henry Smith, assignees of Stevens. (See copies of deeds.) There being a divisional line there then, it

must be plain that the initial and closing point of Lord Baltimore's grant was North, and considerably North of Cedar straits. They reported further that they had continued the East line over Swanseacute (meaning Swanseagut) creek into the marsh of the sea-side. And here it might as well be claimed that they ran *up* or *down* or *along* Swanseagut; by a crooked line when they reported an East, a straight, a right line run *over* Swanseagut creek, as they had reported it *run* "*over* Pocomoke river." All this was done "with apparent marks and boundaries." Not one in most lines between states or provinces was ever more clearly and plainly marked. The marks and boundaries are still apparent. Lieutenant Michler's report to the commissioners, Dec. 20th, 1859, says :

"Some of the marks consist of old blazed trees, such as oak, hickory, gum, cherry, persimmon, mulberry and sycamore. Other marks of the line are to be found either in county roads, or lanes, or in divisional fences of neighboring farms, or in gates, or sometimes in houses, known and admitted to be such by all persons, irrespective of state, the localities being handed down from one generation to another. Along the whole length of the line, from Chincoteague to the Pocomoke river, a distance of between twelve and thirteen miles, there were existing of such marks, at the time of the survey, 33 trees, one gate, the sight of the ruins of an old house standing at the time the Scarbrough line was run, two state roads located on the line, making in all an average of one mark for every half mile." These marks when laid down on the maps were found to be nearly in the same straight line, *the general direction* furnished the course. Two only of those marks are at any distance from a straight line, and these not more than 350 feet. The azmuthe or direction of the line 5° 15′ N. of E., and the line between Chincoteague bay and Pocomoke river, when prolonged across the latter river, and along and near the N. shore of Pocomoke bay to Tangier sound," &c., "reaches the sound *at the Westernmost point of Janes island, about* 500 *feet South of the coast survey signal planted on this island. No* boundary marks of any kind were found West of the Pocomoke river." *And they mutually agreed that this line thus beginning and running and marked continuously from the bay to the sea side,* "*was to be received as the bounds of Virginia and Maryland on the Eastern shore of the Chesapeake bay.* Thus, wherever beginning, and however running or run over land and rivers and creeks and bays, marked or not marked from natural objects to natural objects, over Pocomoke and

over Swanseagut creek to the sea, a straight line, "'twas to be received as the bounds of Virginia on the E. shore," *and it was so received by both provinces.* This agreement was signed and sealed and approved, and cannot be revoked or modified without the consent of both parties; whatever may be the issues respecting the Potomac boundary, there can be but one issue respecting the boundary on the Eastern shore—*an issue of fact;—was this line run as described and mutually agreed upon?* The whole case may be rested on that issue. But Virginia is desirous of presenting the original fairness of the adjustment. We have already shown that in reference to the shape and size of Watkins point as a tongue of land *from* which to run a line, it made an almost exact division of it, to begin at the extremest part of the Westermost angle of it, and to run an East line to the ocean with a variation of about 50° 15′ N. That point is exactly under the 38th parallel of N. latitude. That parallel was the line of Maryland on the Eastern shore. These commissioners were not to run any line but from that point to the main ocean. They had nothing to do with the Potomac line or the closing line across the Chesapeake. But they had to look to two criteria to determine the line accurately; first, to Watkins point; second, to the 38th parallel of N. latitude. They did both with remarkable precision and justice to both provinces. They took the North headland of Little Annamessex which divided Watkins point. But the part they took for the initial point of their survey was about two miles South of the 38th parallel; the variation of the needle in 1668 is estimated at 4° 54′, West; Virginia allowed by law in her surveys about 5° variation. Disregarding the variation at that date it may be said that the surveyors' compass itself observed both the criteria of an almost exact division both of Watkins point and of the 38th line of latitude on the plane of the Eastern shore. Calvert and Scarbrough tell us they began at the extremest part of the Westernmost angle of Watkins point, and ran the line over the Pocomoke river and over Swanseagut creek to the marsh on the sea side. Now one has but to look at the maps prepared by Michler and John De la Camp, under the direction of the then commissioners McDonald and Lee, in the year 1860, to see that the line of Calvert and Scarbrough, after passing East over the Pocomoke river, cuts the parallel of 38° N. L. almost exactly in the middle of the boundary line, runs across Swanseagut a mile or more North of 38th parallel, and terminates on the sea shore about one and a half miles North of the same. Thus the 38th degree being the exactly true line, by observing the

Westernmost angle of Watkins point and Swanseagut creek, they divided the plane of the peninsula as equally by the diagonal line as by the parallel itself. What Maryland gained in the angle South of 38° on the Western side, Virginia was compensated for by the angle gained by her on the Eastern side of the peninsula; the Calvert and Scarbrough line cuts the 38th degree near Wagram about four miles or more East of the Pocomoke river: Mayland gained rather the largest angle. But whether it was equal or not, *it was received and adopted by both provinces as the line on the Eastern shore*, and has been the legal if not respected line for upwards of two centuries. The lands of the late John M. Dennis, one of the most intelligent and respectable gentlemen of Maryland, who lived and died near where the Calvert and Scarborough line crosses the Pocomoke river, always paid land taxes partly in Maryland and partly in Virginia; and the present Judge Franklin, now living on the Eastern shore of Maryland, now pays land tax partly in Maryland and partly in Virginia, on a large tract at Troy, or Long point, on the shore of Chincoteague bay, East of Swanseagut, at the Northeast corner of Accomack on the main. The line was straight from the Franklin to the Dennis farm—from Long, or Troy point, to the crossing of the line over Pocomoke river. When? how? by what agreement or survey? By whom was it ever made a crooked line between that river and the Westernmost angle of Watkins point, to which from that river it points straight as an arrow now? Certainly Virginia has never consented to modification or change of the line on the Eastern shore since 1668. How then is it that Maryland pretends that it ran by the river?

This crook in the line the commissioners of Maryland have endeavored to made out of the words "agreeably, &c.," in the report of C. and S. The distortion is expressed in the report of Thomas J. Lee, September, 19th, 1760, to Gov'r Hicks, of Maryland, page 17. He says: "That these commissioners (Calvert and Scarbrough) were qualified "to fix the bounds of Maryland and Virginia upon a necessity for so doing, and fixed and established the *whole boundary* across the peninsula or chersonese "by a marked line between the Pocomoke and the marsh on the sea-side," run East by compass "*agreeably with*," *not from*, but in the direction of the "extremest part of the Westernmost angle of Watkins point." It is enough to say for the argument, but not enough to say for the reproach of this plain perversion of language and of fact, that it contradicts the charter of Lord

Baltimore, the instructions of both provinces to Calvert and Scarbrough, and their express report to the contrary. The charter makes Watkins point the initial and closing point of the whole boundaries of Maryland. Now, if this idea of Mr. Lee means anything but to crook a straight line, it means to argue or claim that the line was run *from the Pocomoke river* to the shore of the *ocean*, "agreeably with the extremest part of the Westernmost angle of Watkins point, pointing to it, and on a line with it; but that then Calvert and Scarbrough returned to the Pocomoke river where the line ran "over it," and instead of allowing the line to run over the river, ran to the middle of the river and not *over* it, but down it to Cedar straits, and thence to Smiths point. If that is true, then, the line never ran from or to the extremest part of the Westermost angle of Watkins point at all. It makes one impatient in asking whether the charter did not require *a right line* to be run *thence* to the ocean? Whether Watkins point was not identified by Calvert and Scarbrough as laid down on Smith's Map? Whether a line could be run from the whole point? Whether the extremest part of the Westermost angle of that point was not agreed upon as the part "agreeable with which the line was to be run"? Whether the commissioners of '68 don't expressly report that they run the line *from* that *part* East over the Pocomoke river and Swanseagut creek to the marsh of the sea? And whether the line of the Pocomoke river would be agreeable with such a point or part of a point on an East line across the peninsula running the course of the line East of the Pocomoke? Was ever an initial point so treated by a survey as never to touch it after starting from it? This is really the only pretension of the present commissioners for contradicting the express report of Calvert and Scarbrough. We are willing to rest the whole issue upon the test whether they started at the said part of said angle of Watkins point and ran the line straight, or right or East to the ocean. There is nothing to warrant this pretension of Maryland. It is a pure invention, not only without authority or ground, but pointedly in contradiction of the facts reported by Calvert and Scarbrough. The only meaning of the phrase "agreeably, &c.," is that the line was run *conformably* with the extremest part of the Westernmost angle of Watkins point, and not with any other part of that point. With that part of that point was the line agreeable and with none other. At page 12 of his same report, Mr. Lee inculcated the same idea by saying "the boundary they (Calvert and Scarbrough) established by marking certain trees began over Pocomoke river on the

land near Robert Holston's, and was continued by marked trees on what they deemed an East line to the sea-side." The boundary they established "began" not over Pocomoke river, but it was run *from* the extremest part of the Westernmost angle of Watkins point "over Pocomoke river, as well as over Swanseagut creek, to the sea." Another error of Mr. Lee is same page 17—"that they neither marked nor established a line of boundary across "*any part* of what is now Somerset county, Maryland." This is an error equally gross. Somerset county, Maryland, was established in 1666, the 22d August, two years *before* this line was run by Calvert and Scarbrough in 1668. On the South it was bounded by a line from Watkins point East to the ocean, East by the ocean, and North by Nanticoke river and sound, and West by the Chesapeake. Now this shows how Somerset county came to incroach on the point at Cedar straits. Maryland then claimed that her limits extended South to Cedar straits. If that was the initial point of the line between the two provinces, then a county of Maryland could be laid off that far South; and suppose it was; why, then Mr. Lee was right. But its Southern boundary line was no more definite than the whole body of the land of Watkins point. But the line of the two provinces was afterwards, in 1668, fixed and established, beginning at the extremest part of the Westernmost angle of Watkins point at the headland of Little Annamessex, midway between Big Annamessex and Pocomoke bays, and was run East over Pocomoke river. Was this not marking by an initial point on Watkins point, and by a marked place of crossing Pocomoke river a line of boundary across a part of what is now Somerset county, Maryland, if Somerset had before then been laid off as low as Cedar straits? Mr. Lee says: "That they marked and established the present divisional line between Worcester county, Maryland, and Accomack county, Virginia." The truth is that Calvert and Scarbrough never did mark any line between Worcester and Accomack counties, but they ran the line, which is now the divisional line between these two counties, not as between them as counties, but as between the two provinces of Maryland and Virginia. Was Worcester laid off *before* or *after* Somerset? If before, how came the Somerset Southern line to run up the river Pocomoke, instead of East or by a right line to the ocean, to the point of the Southwestern corner of Worcester to the point near the land of Robert Holston? If afterwards, why still did it not run East to the ocean by right line? Lee says the line was intended to be an East line; the charter says that it should be a "right line" to the ocean.

Calvert and Scarbrough tell us where they began and how they ran the line; and yet this commissioner, without data, without any evidence whatever of any other line than that of Calvert and Scarbrough ever having been run by any body at any time, bluntly says: "They (Calvert and Scarbrough) established the boundary between the two colonies East of the Chesapeake *precisely* as it now exists, and they (Calvert and Scarbrough) or Maryland and Virginia designed that the Southern limits of Maryland should extend to Pocomoke bay."

It is only a proof that a respectable topographer was not as familiar with charters and deeds, and evidences of title and the laws which govern their construction, and the bounds of provinces, as he was with the quadrant and theodolite. He speaks of a boundary as it now exists. What boundary? None other existed but that established and fixed by Calvert and Scarbrough in 1668. For a line bound to *begin* at some part of Watkins point, bound to be a right line to the ocean from that point which was begun at a specified point, which was run East to the marshes of the sea by a continuous course from the initial point *over* Pocomoke river and over *Swansegut* creek, which Maryland and he both admit binds Worcester, one of her counties, he arbitrarily asserts and reports another line, beginning at another place, running, not a right line or East line, following the meanderings of the Pocomoke river, not over it, to where he says the Calvert and Scarbrough line began, in the face of what they reported, and in the face of the charter of Lord Baltimore itself, and this he avers to be the line "precisely as it now exists." Did it never occur to him to inquire why, if the Calvert and Sarbrough line binds Worcester county in Maryland, it does not bind Somerset county in Maryland too? That line never did cut Somerset county, Maryland, in one sense, for it only divided it from Virginia—the part South of it was Virginia, and not Somerset county, Maryland.

But if Calvert and Scarbrough did not begin and run an East line, or right line as they describe, where did they begin and run it? They ran one, and but one line. Maryland has never named or shown any other, except as claimed by this report of Mr. Commissioner Lee. Even he admits it was intended to be an East line; but even he could never suppose that any one could have *intended* the line he claims from Cedar straits up the Pocomoke river to near Rob't Holston's to be an East or a right line, because the moment he got to near Rob't Holston's he found whoever ran the line East of the Pocomoke could run an East or a right line if they *intended to do so*, and they certainly

on his theory, had not done so; and, as the charter required, before they reached near Robert Holston's, would his line be "agreeable with the extremest part of the Westernmost angle of Watkins point"?

But besides the argument of "agreeable with," Maryland advances another argument called "*washing away.*" Watkins point was laid down and named by Smith. There it is now, in the same shape of headland and coast, remarkably the same; and the headland of Little Annamessex is still there the Westernmost angle, and there still is the point of main marsh land at Cedar straits, and there are the Fox islands, so strikingly described by the county court of Accomac in 1663 as a "*spiral point*"—so called because of broken thoroughfares of the Fox islands at its end. Those islands were there then as now, as Smith's Map shows. To get over this, Maryland has resorted to "traditions." Can traditions rebut the recorded articles between Calvert and Scarbrough? Can all the washings of the Chesapeake bay, if the North headland of the Little Annamessex was not now still the Westernmost angle of Watkins point—could that rebut the mathematical certainty which can show where it was? Did not Michler's survey find it ad punctum? But the traditions prove where it was. See prior reports and the depositions taken by this commission.

One of the present commissioners on the part of Virginia, (Mr. Wise,) in 1833 began to represent the Accomack congressional district of Virginia in the house of representatives of the United States. Certainly a considerable part of the Southern end of Smith's island was considered by all the people living on it as in Virginia; and the people on that end voted in Virginia. John Marshall, living then and now on Shanks part of Smiths island, always voted for Mr. Wise—and there were others. Later Mr. Jones, one of the commissioners on the part of Maryland, represented the Somerset district of Maryland in the house of representatives of the congress of the United States, and he was for several years cotemporary there with Mr. Wise. Every two years, whilst they were there together, their elections came on—did John Marshall, and others on the South end of Smiths island ever vote for Mr. Jones? If not, it was because they, and their fathers before them were deemed, and had ever been deemed, in Virginia territory. Can Mr. Jones show how that came to pass, if the line on the Eastern shore began at Cedar straits, and was, at the same time, a *right line* across the bay to Cedar straits *from Smith point?*

A right line from Point Lookout to Cedar straits *would cut Smiths*

island; but no such line was ever run, and could not be, under Lord Baltimore's charter, and was not required to be under Lord Hopton's grant, he being granted nothing on the Eastern shore. Now these are exceedingly strange facts, when contrasted with such traditions as those of "King Nelson," and those of living witnesses who pretend to have heard "once upon a time," from old people long dead, that the main land at Cedar straits once made mainland with Fox island, and Fox island with Watts island South—which must have been long before John Smith's survey in 1608, and long before his map in 1629—which lays down the strait now called Cedar and the Fox and Watts islands just as they are now. The fact is that such speculations on physical geography, founded on such washy traditions, and the mistaken proclamation of Governor Harvey, and the clamors of Quakers of Annamessex in 1663, and the fact that Smith erred in laying down the 38th parallel so far South, were once the only pretexts for claiming as far South as Onancock. See Smith's Map, Scarbrough's Report, the Proclamation of Governor Harvey, and the depositions taken before this commission. But all that pretension was ended by the settlement fully and finally made by Calvert and Scarbrough in 1668. Lee even admits "that agreement between these commissioners was accepted as final by the crown, and the lord proprietor of the province," and "that they declared this line (by Calvert and Scarbrough) *to be the bounds of Maryland and Virginia upon the Eastern shore of Virginia.*" What more then is required but to re-mark it permanently? If arguments of inference are still to delay the execution of this agreement capable of being reduced to mathematical demonstration, there are abundant sources of inference sound and clear in favor of what Virginia claims. For example, there were two classes of bays and rivers, the jurisdiction of which the two provinces and states have had to regulate by compact or concurring laws—a river, the Potomac, was concurrent or co-terminous with the line of the provinces, whether it was on right or left bank, or in the channel. The Chesapeake bay was not co-terminous, or concurrent with that line, like the Potomac, but the line of the provinces cut it transversely. Now compacts were made and concurrent laws were passed by both Virginia and Maryland in respect to the building of lighthouses, establishing buoys, forts, ferries, wharves, &c., &c., and pilotage. It would be very tedious to encumber this report with an analysis of all or any of the old laws to show the *contrast* of those joint regulations, pertaining to the co-terminous waters, with those

pertaining to the waters which were *cut across*, or transversely, by the divisional line of the two provinces. Was the Pocomoke provided for like as the Chesapeake bay, or like as the Potomac? In every case like as the Chesapeake bay. Act 9 of 1663 shows that the king of Potomac's lands were all sold and proceeds appropriated by Virginia. Act 1, 1667, relates to a tax of two shillings per hogshead on tobacco, &c., for relief of inhabitants "*in Potomac river.*" Act 1, 1679, relates to stores and garrison against Indians at the head of Potomac at a place called Niapsco. See Purvis' Collection, &c., London edition of 1682. All the laws touching the Potomac on every subject apply all along the shores or channel from head to mouth. But the laws providing for the proportionate joint expense of light houses, buoys, &c., where one province held the head, and the other the mouth of the waters, were very different. Maryland, from her charter, held the head of the Chesapeake bay and the head of the Pocomoke river; and Virginia after, as well as before the grant to Lord Baltimore, held the mouth of each.

It was for that reason that the regulations touching the Potomoke river were assimilated to those touching the Chesapeake bay, and not to those of the Potomac. But this line of argument is a waste of labor, when we have the positive and indisputable line agreed to by Calvert and Scarbrough and fixed forever by the two provinces in 1668. But not only did Calvert and Scarbrough and the two colonies fix and establish this line, but they settled and adjusted the rule by which every question of claim or right dependant upon the line should be determined. Lord Baltimore, as we have seen, hurried and encouraged the issue of patents by Elzey and others from 1662–63 up to 1668. And Virginia had granted patents up to Bokotonock on the Sinepuxent bay on the sea coast. Maryland had been occupying Southward on the bay, and Virginia Northward on the sea side. When the line was fixed the rule was settled to govern these conflicting patents too. See the Imprimis of the Articles of Agreement. All the patentees of Virginia were saved in their titles. Again: All patentees of Virginia elsewhere on the Maryland side of the line, of lands *not also patented in Maryland*, were saved as in the first class. Again: All patentees of Virginia, *who had also seated them* in Maryland, *though already patented in Maryland*, but not seated, should enjoy the same, unless they were proved to have seated them in defiance and despite of the governor of Maryland after warning given, &c. Again: Any patentees of Virginia in Maryland for lands for which Maryland

had granted patents, should yield to the patentee from Maryland; in all and every case "*paying the half fees to the surveyor general (Scarbrough), and full fees to the secretary and chancellor (Calvert).*" Here is an example that commissioners in old times were like those of present times, careful of their own perquisites. Scarbrough got half and Mr Secretary and chancellor got full fees. And why the difference, is not now known. Certain it is, that the patentees of Virginia in the Maryland territory, as found by the line established, had a much better provision made for them than the patentees of Maryland found to be in the Virginia territory. There was no reciprocity at all. Every patent granted by Maryland South of the line fixed, was left to its invalidity. Those granted *before* 1668 *were annulled*, and those after that date were void.

Such is the fate of every patent adduced now on the part of Maryland. Why was this? Some people in Annamessex always alleged that Scarbrough conjured Calvert by allowing full instead of half fees. The reason was a graver one, and rested on better grounds. Not an intruder from Maryland South of that line fixed by Calvert and Scarbrough in 1668, either before or after that period, ever seated or settled *East of Pocomoke river.* There were no settlers on that part of the Eastern shore line who had ever defied or resisted the royal government of Virginia. For the reasons already stated, the refugees and non-conformists had all been driven West and North of the Pocomoke river. There, from Pocomoke to Manokin, they had settled *in defiance* of the royal government, and to defeat its jurisdiction—just as Maryland in the 3d article excepted against such as were seated in her limits under Virginia's patents, so Virginia excepted to all such settlers in Annamessex in her limits, as all had been seated by patents from Maryland in defiance of the royal government. All these had been so patented and seated; there were none anywhere else to be provided for, and those there were therefore excluded from this saving of titles. Nobody wanted their lands South of the line then, though some are valuable now; and the titles, by mere omission and dereliction, have never been disturbed. Now they will be in a tantalus condition; if they are given to Maryland they will be seated on the Tangier and Pocomoke sounds, with the oyster rocks, which are their meat and bread, at their doors, and will be excluded from taking any in Virginia's waters. If Virginia takes them within her limits, they can live and thrive and their lands increase in value.

X.

After Lord Baltimore settled his boundary with the colony on the Eastern shore of the Chesapeake bay, he had a controversy with Wm. Penn about the boundary of his Northern limits. He claimed the colony of Delaware and the line of 40th North latitude. The grant to Penn is described in the King's letter to Lord Baltimore April 2d, 1681. See DeJarnette papers, No. 113.

The contest between Penn and Lord Baltimore was one between a court Quaker and a cavalier Catholic. The latter was much the most honest gentleman. From London, 16th September, 1681, Penn warned settlers, whom he claimed to be within his grant of three degrees North latitude, not to pay any more taxes, or "sessments," by or under any laws of Maryland. He coaxed them movingly, yet warned them of his power with his superiors in London. This letter was partly addressed to *Augustine Herman*, Lord Baltimore's map maker. See Dejarnette papers, No. 114. On the 19th of August, 1682, the king ordered Lord Baltimore at once to proceed to set forth and ascertain the boundaries between Maryland and Pennsylvania, and says "that the boundaries of Maryland and Pennsylvania cannot by any method be so certainly effected as by an admeasurement of *the two degrees North from Watkins point, the express South bounds in your patent, and already settled by commissioners between Virginia and Maryland.*" Here is the king's attestation of two facts: first, *that Lord Baltimore was granted but two degrees*, and in saying "the express Southern bounds in your patent," the meaning is not that *two degrees* were expressed, but that *Watkins point* was expressed; and second, that being *already settled by commissioners*, the latitude was then fixed and known to be two degrees from the 40th parallel; Watkins point fixed the degree, its latitude being known. If the latitude of Watkins point was not known to Smith in 1629, it must have been known later in 1682, for then the observatory at East Greenwich had been established eight years under Flamsteed. Again, in the same paper, the king said: "We have thought fit to recommend the same in a most particular manner to you, willing and requiring you, that with all possible speed, upon the receipt hereof, you proceed to determine the Northern bounds of your province as the same borders on Pennsylvania, *by an admeasurement* of the *two degrees* granted in your patent, *according to the usual computation*

of sixty English miles to a degree. Beginning at the South bounds of Maryland, according as the same are already settled by commissioners as is above mentioned, &c." Thus Lord Baltimore was in effect ordered to begin his measurement on his South bounds, as already settled by Calvert and Scarborough, the only commissioners ever then appointed, who did settle them at Watkins point, with its initial at its Westermost angle. If degrees were not named in Baltimore's patent, Watkins point was, and was found exactly on the 38th parallel. Lord Baltimore had then but to measure 120 miles North from Watkins point and he would reach his North boundary on the 40th parallel. But it matters not what its latitude was, this is proof, that it was settled both that Watkins point was ascertained and fixed, and that Lord Baltimore's Southern boundary line was settled; and we have asked in vain, again and again, when did it become unsettled? And it must be observed, that this order came just fourteen years only after the Calvert and Scarborough survey. When all the facts were fresh in the records of England and the colonies. See DeJarnette papers, No. 117. But we have positive evidence, which Lord Baltimore himself has left to the state records that he acknowledged and acquiesced in the Calvert and Scarborough line.

He has left his own account of "a conference held between the Right Honorable Lord Baltimore, pro'r of Maryland, and William Penn, Esq., proprietary of Pennsylvania, at the house of Col. Thomas Tailler, on the Ridge, in Ann Arrundell county, the 13th of December, 1682." See Dejarnette papers, No. 118. With a short preface he gives their colloquy. He describes Penn's florid manner, "It was oily, it is true; he would do all to be a good neighbor." He then produces a letter from the king (that just quoted). On reading it, Lord B. complained of some misinformation, and produced his patents and a transcript of Penn's patents, and then describes himself as saying: "I have for my *Northern* bounds the 40*th degree* of North lat., which, by *your* patent, is your *Southern* bounds, as Watkins point is mine." Did he, then, and when he noted what was said, then, not know where Watkins point was? and where the identical part of it was where his Southern bounds began? Nothing is left to doubt about the answer to that question; for fortunately he had the correctness of his statement of this conference certified and appended to it, *and the first name* of six persons who signed the certificate, is that of "*Philip Calvert,*" *his nephew, his chancellor, his commissioner,* with

Scarborough, in 1668. Lord Baltimore certified the true copy himself, found in the state paper office of England "Colonial Maryland," vol. 43, p. 149, 153. Here, then, when with this letter of the king's twice reminding him that his Southern boundary *was settled by commissioners* at Watkins point. And when he said "Watkins point is my Southern boundary," he could have said nothing else in the presence of "Philip Calvert" but what de did say and admit. And in speaking of Watkins point thus, he cannot be understood as meaning any other point and part of the point than that which had been identified by "Philip Calvert" and Edmund Scarborough. In reply, Penn reminded him he had but two degrees of latitude. He did not deny it. See p. 2. And then the wily Quaker tempted him to start further South at 37°, 5′ N. L. He (*Penn*) *would take where B. ended.* This puzzled Lord B., but he was not to be trapped, and he would consider; but Mr. Penn must run line of 40th degree first. Penn then proposed for him to begin *at the capes of the Chesapeake*, which he said was in 37°, 5′ N. L. The cunning shad had no scruples to conspire against Virginia's right of territory, and to tempt Lord B. to try to take it. Lord Baltimore, though knew that the lower he ran South the narrower would be his territory North. He then drew back from being pressed Southward down the Eastern shore peninsula. Penn wanted the outlet of the Susquehanna river. Lord B. repeated that he claimed 40th parallel to be taken by a sextant of 6 or 7 feet radius. Penn then offered to lay aside the king's letter, if Lord B. would begin his South line at 37° 50′ instead of 38. Lord B. bluffed his proposal by asking Penn whether he had purchased the Duke of York's pretensions to Delaware? Penn: "Upon terms," but wanted to proceed first to the bounds between him and Lord Baltimore. Lord B. still stuck to 40° N. L., "which to find," said Penn, "I propose to begin at the capes and run two degrees." To that Lord Baltimore replied: "*My Southern bounds being Watkins point, was so determined by commissioners from his majesty and others from my father. Now had they sett out Watkins point higher up the bay, my father must have been contented therewith, and the Northern bounds being the 40th degree of Northern latitude, beyond which I am not to run.*"

Here is the full admission that the Watkins point line was fixed, by whom fixed, and that he was bound by it. Set out higher up or lower down "his father and he had to be contented therewith." Could any thing be more definitely expressed than this? Penn again and

again repeated his proposal of the capes, and as ofter Lord Baltimore recurred to 40th degree and the 7 foot sextant. Lord Baltimore again recurred to Delaware, and asked on what do you claim? Penn begged to conclude first discourse; Lord B. persisted in his charter. Penn poked at him the capes again. Lord Baltimore demanded 40°, no sea-quadrant, but a seven-foot sextant. Penn proposed arbitrators; then arose a jar about a Captain Cannaway, and mis-reports and some suspicions of foul play about maps, &c. Lord B. held to his patent and appealed to the *sun* to show where the 40th degree N. L. was. Penn wanted to go to the capes again. Lord Baltimore told him he might for his own satisfaction. Penn then became soft; whispered a wish "*between ourselves.*" Lord B. only first premised that an observation be duly taken to answer the king's commands. Penn then nudged, it seems, closer up. He must have whispered low when he said: "I question not, but if the Lord Baltimore *would vouchsafe* to discourse the business in *private* with me, we should *fairly accommodate all matters.*" We are not left to conjecture what "to *discourse*" the business in private meant. No. 119 of the Dejarnette papers explains all. In a letter of 11th June, 1683, dated at Patuxent, Lord Baltimore says: "Having lately had the long desired second conference with my neighbor, Mr. William Penn, I send you the same." And he prayed to be heard in person versus Penn. He would embarque for England in April 1684 to make good his claim to Delaware. The written conference was headed: "The sum and substance of what was argued and spoken by Charles Lord Baltimore and William Penn, Esq'r, at their private conference at New Castle, on Delaware river, Tuesday, the 29th May, 1683." When they met that day, Lord Baltimore desired to know of Mr. Penn what proposals he had to make about their bounds. Penn answered that he would not insist on his majesty's letter of 29th August about the two degrees of latitude. But there was an admeasurement still to be insisted on. That seemed strange to Lord Baltimore. Penn, "not without some heat," explained what he meant by another admeasurement. It was this: Take an observation at Watkins point, ascertain its latitude, thence to measure to the 40th degree; saying that out of every degree he did not doubt but to gain six or seven miles, and by that means to *gett* water at the head of Chesapeake bay, and that this was the mystery, &c., &c. He would procure it from his majesty. Lord Baltimore replied he doubted whether he could so impose on his majesty and the council; spoke of Watkins point *as his South bounds* after

he had fixed it, and could not see why his North bounds, as well as South, could not be measured. He spoke also of Penn's grant *by degrees*, and said, "I had nothing given me *by any number of degrees*, but *only* Watkins point for my *South bounds*. He objected further, when Penn intimated another proposal; he offered to bribe Lord Baltimore for the inlet of the Susquehanna and some land. Lord Baltimore could not assent without admeasurement of his Northern bounds. Penn then inquired about latitude of Palmers island in the Susquehanna river. It was sixteen miles South of 40th degree; twelve miles from New Castle. Penn then asked the price. Lord Baltimore wanted time, but Penn would give him but a day. They could not agree, and parted.

This convicts Penn of trying to buy Lord Baltimore to lay his claims on Virginia territory. He would not and did not, but abided by Watkins point and his Southern bounds, "already settled by commissioners." This was to his honor. By whom, when, how, for what reason, was Charles Baltimore's decision and observance of good faith broken? The ground for doubting or denying this settlement in 1668 is a mystery. Lord Baltimore strong and bravely, but in vain, after much correspondence, praying to be heard; after an accrimonious controversy with Markham about the Delaware survey, and incurring displeasure by omitting to proclaim "William and Mary," he was deposed from the right of lord proprietor, and left merely his rights of individual property. See his letters to Sir Lyonell Jenkins, June 12th, 1683, No. 120; December 7th, 1683, No. 123; to Blaithwait, No. 124, December 11th, 1683; to Sir Lyonell Jenkins, "Memorandum concerning Pennsylvania," Feburuary 12th, 1684, No. 125; Sir E. Herbert "concerning Wm. Penn," 30th June, 1684, No. 128; Wm. Markham's answer to the Lord Baltimore, March 17th, $168\frac{4}{5}$, Nos. 130, 131, 132; Penn's petition, August 18th, 1685, No. 135; Report of the Lords of the Committee for Trade and Foreign Plantations "upon ye difference between the Lord Baltimore and Mr. Penn, 13th November, 1685," No. 135; prescribing oaths of allegiance and supremacy; memorandum concerning Maryland and war with France, 26th April, 1689, No. 139; declaration of the inhabitants of Maryland proclaiming "William and Mary," January 7th, 1690, and order of his majesty thereon, with letter to Maryland approving the proceedings of inhabitants thereof, and ordering them to secure the government, No. 140; Lord Baltimore's petition to the lords of the "Committee for Trade and Foreign Plantations," for a hearing, and

his humble proposals; and Lord Chief Justice Holt's opinion that "the king may by his commission constitute a governor (of Maryland) whose authority will be legall," petition dated September 1st, 1690, No. 141; and Lyonel Copley, Esq'r, commissioned governor; commission to Lyonel Copley, Esq'r, March 12th, 1691, No. 142. All the numbers here referred to are of the Dejarnette Papers.

The reason assigned by George Treby, attorney general, for seizing Maryland was, "The nature of the seizure is only to take the government out of the hands that neglected and endangered it into the king's hands; but the laws and customs and the *propertyes* of the inhabitants are to be preserved."

This brings us to

XI.

The deposition of Lord Baltimore. He was not restored to his lord lieutenancy until 1715 by George I. From 1633 to 1715 the lord proprietorship existed, with the exception of some two years, by *ouster* of the Claiborne rebellion, of eleven years or more under the commonwealth and Cromwell, and of twenty-five years from 1790. Out of eighty-two years in all, the lord proprietor was *out* thirty-nine years and *in* but forty-three years. His territory was curtailed in that time by the decision that Delaware passed to Penn from the Duke of York, and by Penn's settlement about sixteen miles South of 40th degree N. L. Lord Baltimore never had an unclouded and quiet title until 1715. What then was restored to him? Certainly Delaware and the part of Pennsylvania taken from him were never restored, and there is no more evidence that any portion of the grant to Lord Hopton, &c., &c., was. Pennsylvania, Delaware and Virginia all continued alike to hold to their respective parts of the dismemberment of Lord Baltimore's original territory. He certainly yielded the Northern Neck of Virginia, and to the boundary of the Fairfax stone. Why, if he is now entitled to the Potomac river? That was as much in the grant as was the whole neck; and the same claim which drove him to retire to the first fountain of the North branch of the Potomac, equally constrained him to yield the whole river and its islands. See Laws of Virginia, August 10th, 1736, George II., ch. 13th, an act for confirming and better securing the titles to lands in the Northern Neck, held under the Right Honorable Thomas Lord Fairfax, baron of Cameron, &c., &c. Hen. Statutes at Large, vol. 5, p. 514.

XII.

But what quieted all titles and bounds, more than any preceding events or causes between all the provinces, was the definitive treaty of peace settled between Great Britain and France at Paris, 10th February, A. D. 1763. The main ends and objects of that very important treaty, were to make peace and to perpetuate it; especially by the fixation and description of boundaries of the various provinces of the respective sovereignties in America. Each power described what they claimed and what they renounced jurisdiction over, and maps were made of their agreed divisions. Fortunately Mr. Dejarnette procured in England a photograph copy of a section of the English maps made under that treaty, "by Eman Bowen, geographer to his majesty, and John Gibson, engraver." This map contains a number of the articles of the treaty printed on its face. Its title is: "An accurate map of North America, describing and distinguishing the British and Spanish dominions on this great continent; according to the definitive treaty, concluded at Paris 10th February, 1763. Also, all the West India islands belonging to and possessed by the several European Princes and States. The whole laid down according to the latest and most authentic improvements." And on its face it is inscribed: "The limits of His Majesty's several provinces are here laid down *as they at present exercise their jurisdictions.* But the limits of the Massachusetts province with New York, New York with New Jersey, Connecticut with New York, and of Pennsylvania with Maryland, are not yet finally determined. Nor is the boundary of North and South Carolina yet settled; or of South Carolina with Georgia." But the boundary of Maryland and Virginia was settled and determined and laid down by authority of Great Britain and the geographer to His Majesty, George III., under this treaty. And the boundary of the Potomac is placed distinctly on the left, or North bank of that river, to Point Lookout, and thence South of East to a point on the Western shore of the peninsula; and thence is drawn East to Swanscut creek on the Eastern side of the peninsula. This is the highest authority known to the law of this case. It is by and under treaty laid down with all the care and exactitude required by the exigencies of future peace and quiet possessions between the two greatest powers on earth. Now is it to be supposed or imagined that Great Britain herself, in a negotiation like this, did not know the

boundaries between her own provinces, and especially two of the oldest colonies, between which questions of boundary had been much mooted and much discussed before her lords of the committee of trade and foreign plantations? If her officials were not at first informed, was not the royal observatory at East Greenwich, then established nearly a centuary—from 1675, Newton had made all his discoveries, and died thirty-six years before; he had wrought out the puzzles of the great circle of the armillary sphere and informed the world how many English statute miles were to be allowed to a degree of longitude in the latitudes of Maryland and Virginia. Halley had succeeded Flamsteed as Royal Astronomer, and had died twenty-one years before this map was made; and is it to be supposed that Bowen, the royal geographer, would not seek the most authentic and conclusive information from the law officers of the crown, and from the state paper offices, to authorize him to lay down the boundary of Maryland and Virginia in 1763, as "determined," and as those provinces then "exercised" their jurisdictions? Whether he did or not, Great Britain so "determined," and so solemnly, that her determination there was notice given to other powers with whom she treated by which she was bound, and bound too in matters of much importance. All her provinces varied from each other in many particulars of the regulations of commerce and trade and navigation, and the vessels of France required the information as to parts of what province they entered and what regulations they were to observe. As to what the *treaty making power* of Great Britain could do with the charters of her provinces, even to annihilate them, it is supposed, admits of no question or debate. Great Britain would have ceded both provinces to France as easily as she acquired Canada, and certainly she could, as she did, fix their bounds.

XIII.

After the restoration of the Lord Proprietor's title in 1715, and possession of Maryland, and after the treaty of Paris in 1763, there was an uninterrupted period of peace and comity between her and the royal province of Virginia, as long as they were colonies. The boundary on the Eastern shore was by all the inhabitants of both colonies known to be settled, and there was no collision at Annamessex until lately. The Quakers, and if there were any Papists there left on the marshes or hammocks South of the Westernmost angle of Watkins

point, and North of Pocomoke sound, and West of that river, they were not disturbed by any religious persecutions, and they were too few and too inaccessible or inconvenient to the officers of the Virginia laws to be troubled by tax gatherers even, or by summons of any sort of public service; but that the mouth of what was then and now called Little Annamessex, was always known and claimed to be in Virginia, in the latter end of the 18th and beginning of the present centuary, is known to many now living in Accomack, Virginia. True, that for the reasons already mentioned of their location, they have not voted in Virginia or paid taxes, or even in that time been treated or have acted as citizens of Virginia. But time does not run against a sovereign or state as to boundary; and Virginia has always continued to claim the tongue of land above Cedar straits and Pocomoke sound by holding and keeping her territory on the South end of Smiths island West; and as will be shown, she patented the whole extent of this territory up to 1763, and to leading citizens of Maryland. See her patents to Daniel, of S. T. Jenifer, and to Daniel Jenifer, (a register of the land office of Maryland,) and Anne Toft, his wife, and Wilbourne and others, and to John Nelson and Robert Pitts, hereto appended. The grants to some of these patentees were up to Nanticoke sound. By the by, the name Herring island, on the coast survey map is erroneous:—it should be Herne or Hern, (for Heron island.) The populations of Maryland and Virginia were too similar in manners and customs and kinds of possessions, and too cavalier alike in their tone, not to assimilate and affiliate in the most cordial relations. The Howards of Maryland had been too close comrades of the Washtons of Virginia, for the Maryland and Virginia people in their homes and habitations and associations, as well as in their continental lines during the night of the revolution. The battle of the barges at and off Tangier and Watts islands in the Chesapeake bay, *the very last battle of that revolution*, was fought by Accomack, and Pocomoke, and Annamessex people, volunteers who came together like brothers and neighbors and friends, under the illustrious Whaley, a commodore of Maryland, who fell in bloody fight, and whose bones now lie not unhonored at Onancock in Accomack. The glorious good he did was not buried with his bones:—will not Maryland gratify Virginia by giving them yet a monumental stone?

Accomac county in Virginia and Somerset in Maryland had jointly contributed to build and incorporate their first academy of learning (Washington academy, near Princess Ann in Maryland). Land was

given to it in Accomac; and when population so increased that Accomac could build her own academy (Margaret academy, near Pungoteague in Virginia), the legislature of Virginia, in 1790, authorized it to be sold and divided between the two academies. Such was the feeling of amity between the best of neighbors. And these people then cared not which state they were citizens of; but those of Cedar straits were most convenient to Maryland. The fisheries and fowling were superabundant, and until about forty years ago they "lived and let live," in the most friendly neighborhood and free interchange of fisheries as well as comities of every kind. We repeat, that it was not until oyster catching and planting and packing became so profitable and worth so much, that any "sacra fames auri" ever disturbed that old-time state of kindness between these people. But *since*, Virginians have been arrested and tried in Maryland for fishing in her own waters.

The delegates and representatives of the several counties and corporations of Virginia, on the 29th day of June, A. D. 1776, reciting their grievances under the detestable and insupportable tyranny of George III., king of Great Britain, unanimously declared the independence of the colony, and ordained and adopted the first constitution of state government in America. Heroic as was that age, there was no act of men or states more magnanimous and exemplary than the adoption by Virginia of the 21st clause of that first constitution, to wit: "The territories contained within the charters *erecting* the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and government, and all other rights whatsoever which might at any time heretofore have been claimed by Virginia, except the free navigation and use of the rivers Potowmack and Pocomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. *The Western and Northern extent* of Virginia shall *in all other respects stand as fixed by the charter of King James the 1st, in the year* 1609, *and by the public treaty of peace between the courts of Great Britain and France in the year* 1763, unless, by act of legislature, one or more territories shall hereafter be laid off and governments established Westward of the Alleghany mountains. And no purchase of lands shall be made of the

Indian nations but on behalf of the public, by authority of the general assembly."

This generous and gratuitous clause of constitutional conveyance to her sister colonies, in the act of taking upon herself the responsibilities of independence, whilst they were yet colonies, and she had no guarantee that they would back her example, is unexampled in the history of revolution. But she excepted the free navigation and use of the *Potowmack* and Pocomoke rivers, with the property of the Virginia shores and strands. And her Western and Northern extent she reserved, as fixed by the charter of 1609 and by the treaty of 1763. The latter had modified the extent of her grant in respect to Maryland. She could not, after the treaty, claim to the extent of her grant Westward. She had claimed the river Potomoke for its whole extent, and she had claimed both shores of the Pocomoke, including its mouth, as high up as the Calvert and Scarbrough line ran across the Pocomoke river. Maryland was fully aware of this cession and reservation; but was not satisfied, and claimed more. She knew of the Hopton grant and of the Calvert and Scarbrough line, and that Virginia had therefore claimed both; and yet of the Northwestern territory between the Ohio and Mississippi rivers, she claimed a share.

And this brings us to

XIV.

The cession by Virginia of her immense Northwestern territory.

She abjured her colonial state without waiting for others to move, "set the first ball of the revolution in motion" from her old magazine in Williamsburg, which never ceased rolling until after ricocheting all over the continent; it stopped at Yorktown, within twelve miles of where it started, on her own soil, and then, after independence was declared, set to with all her mighty men to form the confederation of the free, sovereign and independent states. The legislatures of the thirteen colonies, having approved and authorized their representatives in congress to ratify the articles of confederation agreed on by the delegates of the "United States of America" in congress, the 15th November, 1777, congress ratified them on the 9th July, 1778, *then* voting Mass'ts bay and Rhode Island and Providence Plantations, Connecticut, New York, Virginia, South Carolina, only six states. North Carolina, 21st July, 1778; Pennsylvania, 22d July, 1778; Georgia,

24th July, 1778; New Hampshire, August 8th, 1778; New Jersey, November 26th, 1778; Deleware, May 5th, 1779, and Maryland not until March 1st, 1781. Why did Maryland decline or fail to join the confederation of states for three years and four months? She declined until the states which held the new lands of the West included in their ancient charters consented to cede them to the United States for the union and common benefit of all the states. See 10th Hennings Stats. at Large, appendix "Resolutions and State Papers," pp. 547 to 567 inclusive. The circular of the president of congress, September 10th, 1779; the declaration of Maryland, December 15th, 1778; the instructions of that state's general assembly to her delegates in congress at the same date; "the remonstrance of the general assembly of Virginia to the delegates of the United American States in congress assembled, the 14th of December, 1779"; the "act of the state of New York," to facilitate the completion of the articles of confederation and perpetual union, passed 19th February, 1780, the "recommendations of congress for cessions of Western territory, September 6th, 1780, these and other causes influenced the state of Virginia to pass her resolutions of January 2d, 1781, "for a cession of the lands on Northwest side of Ohio to the United States" "on certain express conditions and reservations," among which were the following, to-wit :

"That all the remaining territory of Virginia *included between* the Atlantic ocean and the Southeast side of the river Ohio, and the Maryland, Pennsylvania and North Carolina boundaries, shall be guaranteed to the commonwealth of Virginia by the said United States."

"That the above cessions shall be void and of none effect unless all the states in the American Union shall ratify the articles of confederation, heretofore transmitted by congress, for the consideration of said states." And these resolutions caused and induced Maryland, within the then next sixty days, to join the confederation the 1st March, 1781." When granted a common benefit in all the Northwestern territory of Virginia, and accepting its reservations and conditions, by joining the confederation in consideration of the grant, is she not estopped from denying or disputing "the remaining territory of *Virginia?*" Can she righteously say now that the grant to Lord Hopton was bad and not recognized under the treaty of 1733? that it was not included in Virginia's reservation? that the line of Calvert and Scarborough was never run, or, if run, that it now can not be

identified and located? That the treaty of 1763 did not finally fix the limits between her and Virginia ? or, if they even were not fixed as Virginia claims, can she say that Virginia did *not so mean* when she ordained her constitution of 1776 and passed these resolutions with these expressed reservations? Did not Maryland mean she would not, whether she legally could or not, dispute the remaining territory of Virginia, as *she* (*Virginia*) claimed it, when she (Maryland) accepted a grant worth millions more than the small reservations named? True, congress afterwards wisely declined the guarantee on the part *of the United States*, leaving the questions of boundary to be decided and agreed between the states themselves, or the proper tribunals to decide them judicially if not agreed. And Virginia executed the cession without the guarantee of the United States; but was not *Maryland* bound, by accepting the cession, or her part of the cession, from Virginia, in consideration of joining the confederation? Did she not get millions over her "quid pro quo?" Did she not assent? Is she not morally and legally estopped from claiming now what she knew Virginia then claimed to be part of her remaining territory? Let justice and equity and considerations higher than territory or any other price plead the reply. See Tazewell's Fragment, the last report appended. The Report of Congress. 11 H. Stat. at Large, appendix 567. The Deed of Cession, Id., 571, made 1st March, 1784.

XV.

Having taken this general review of the history of boundaries between Virginia and Maryland, which it is presumed will control the decision on the fact and the law of the case, we now proceed to state and comment on the incidental facts which may prove tests of the history.

I. *Patents.*

We must premise that the commissioners on the part of Virginia, who have heretofore acted on this question of boundary on the Eastern shore of the Chesapeake bay, have overlooked, or not been informed of a fact, which would have shown them the Eastern shore boundary in limine ; a stranger to the history of the counties of Accomack and Northampton, or one ignorant of it, might well be deceived in looking for the patents of Virginia granted to her inhabitants, on her part of the peninsula of the Chesapeake. The colony of Virginia

was divided in 1634 into eight shires, and Accomack was one of them, consisting then of the whole of Virginia's part of the peninsula. By act 13th of the year 1642–3, the name of the whole was changed to "Northampton." For the royal grants to 1642–3, one must look to the index of Accomack. After that period the index of Northampton must be looked to. Accomack resumed her original name, (when is not shown by Henning,) and continued to be called Accomack to nearly the end of colonial times. See 1 H. S. at L., pp. 224, 249, and index of that volume under head "counties." A regiment was authorized to be raised for Accomack and Northampton by act chap. 1, December 1, 1775, showing they were then divided into Accomack and Northampton. See 9 H. S. at L., p. 76. Northampton was probably divided under a general law providing for the division of frontier counties, passed in the 3d session of the general assembly from 1702 to 1705. See 3 H. S. at L., p. 284. But this is immaterial, except to note how the patents of the Eastern shore have been overlooked. Seeing no name of "Northampton" adjoining Maryland on the maps, and "Accomack" there always, the Accomack index was heretofore looked to alone. By examining the index for both of those counties, we find patents for every foot of the territory from the Western shore of Smiths island, in the Chesapeake bay, to the Eastern shore of Assateague island, on the Atlantic ocean, on the whole course of the divisional line run by Calvert and Scarbrough in 1668. To begin on the Chesapeake side :

"Patents issued during the Regal Government of Virginia, Accomack County."

To Robert Pitts, October 2, 1663 : 3,000 acres North by Pocomoke and West by the bay.

To Charles Scarborough, April 4, 1668 : 600 acres, the Western islands of the Chesapeake bay.

To Henry Smith, October 9th, 1667 : 1,000 acres, *Pitscraft, on Smiths island, the other half of the land granted to same man for part of same tract and the patents of each state, calling a divisional line of Maryland and Virginia.* That tract, 2,000 acres, was only to be divided by a right line, East and West, so as to lay off 1,000 acres on each side.

To John Taylor, October 27, 1673 : 34 acres, Little Watts island. This is the island which the present commissioners contend was pro-

bably the end of Watkins point, on the theory of great washings away. Here is proof it was an island in 1673, and though little then, there now it remains.

To Thomas Welburne, April 4, 1678: 83 acres, Feaks or Fox island, North of Watts island. This is a group of islands, which the same theory claims to have been main land on part of Watkins point.

To John West, November 25, 1679: 2,500 acres, embracing Georges island in the Pocomoke river; showing that Virginia owned the islands at the mouth of that river.

To John Custis, April 20, 1680: 100 acres, Cobham's island in Pocomoke river, showing same.

To Capt. Wm. Custis, April 17, 1686: 800 acres on Feaks or Fox island.

To John Carter, October 26th, 1699: 130 acres Fox North island. This is the first South of cape at Cedar straits.

To McKenny and Jenkins, April 25th, 1702: 150 acres South end of Watts (Big Watts) island.

To same, same date: 24 acres Gabriel, alias Watts (Little), alias Goat island.

To Francis McKennie, Arcadia Melburne, Daniel of St. Thomas Jenifer, and John West, October 23d, 1703: 3,804 acres. The islands lying North of Tangier island, Herne or Hern (contraction of Heron, now laid down as Herring on coast survey map) island, and the six islands (Smiths island cut into thoroughfares), &c.; and the beginning and ending of this grant is near Nanticoke sound. Tangier and Smiths islands, and their groups of smaller islands, form Tangier sound as far North as Kedges straits between Smiths island and South marsh. South marsh and Bloodswarth island, from Nanticoke sound up to Hoopers straits, called by Smith and by the act of Virginia of 1663 the Limbo. At the Eastern head of Nanticoke sound is Monie bay, into which the only Wicommico river on the Eastern shore and Monie river empty; and Monie bay and Nanticoke river and Fishing bay all empty into Nanticoke sound. The chart of the coast survey lays it down as a part of Tangier sound, but that is an error. Those charts are not to be relied on for names, though very accurate and reliable for topography. South of Monie bay is Manoakin river, emptying into Tangier sound; and there on the Manoakin Col. Scarbrough had his meeting with the Quakers and others, over whose doors he put the "broad arrow" (the mark of royal goods) in 1663. In a right line West of the mouth of the Manoakin is South marsh, and near

Nanticoke sound was the initial and terminating mark of this patent to Daniel of St. Thomas Jenifer and Francis McKennie among others. One of them among the wealthiest and foremost men, and the other among the foremost of divines of Maryland. One of them, Jenifer, lived at or near Annapolis, the other on the Eastern shore, not far from the locality of the patent. One of these co-patentees, Colonel John West, of Accomac, was a considerable man of his day, often in the house of burgesses of Virginia. Is it to be supposed that they did not know which was Maryland and which Virginia territory, or that they didn't know, or had forgotten, where the line of 1668 was run only thirty-five years before—that it was not far from Nanticoke sound? The patent speaks broadly, "near Nanticoke"; the meaning only of which was, that they were to go to the line between Maryland and Virginia, and when there they would be near Nanticoke. They may have erred if they went to South marsh, but if they went to Smiths island only, that is enough to show that the pretensions of Maryland now are contradicted by two of her most respectable citizens. Then it can't be said that these men conspired to take territory from Maryland. If John West was so disposed, there were two intelligent sons of Maryland to protect her interest. The truth is, that the line of 1668 cuts now not far from Nanticoke sound, and far North of Cedar straits, as proved by this patent.

To Eliza Scarborough and Arthur West, May 2, 1713: 900 acres. All Tangier island.

To John Marshall, June 16th, 1727: 170 acres on the bay side, &c., "to a marked oak, *being one of the division trees between Virginia and Maryland.*"

Commonwealth's Grants.

To Sacker Nelson, May 4th, 1787: 476 acres, Northerly and Easterly on Pocomoke sound, Southerly on the thoroughfare, Westerly on Tangier sound. He is the fountain of tradition, whose memory lives immortal in the title of "King Nelson," among the islands and hammocks of Tangier sound and Annamessex. See deposition. He was a grantee of part of Fox islands in Virginia.

To Richard Evans, October 31st, 1791: 47 acres at Queen's Ridge, on the bay side, at a point of marsh near Tangier sound.

Patents West of Pocomoke, cover 13,784 *acres.*

These patents embrace 13,784 acres, and cover every acre of land and water South of the Calvert and Scarbrough line of 1668, main and islands, between the Chesapeake bay and the Pocomoke river ; in other words, the whole of the disputed territory West of the Pocomoke river. Robert Pitt's patent calling for its North line from Pitt's creek, on the divisional line of the colonies to the bay, granted every foot of land on the main between that divisional line and the Pocomoke river and sound. The other patents embrace all the islands of the Pocomoke sound, and of the Chesapeake bay and Tangier sound, from Watts island to near Nanticoke sound. All of these granted by Virginia North of the Calvert and Scarbrough line, prior to 1668, were expressly saved to the patentees by the articles of agreement signed and sealed by Calvert and Scarbrough. Any grants made by Virginia after that agreement in 1668, North of that line, were null and void to the extent of the part North : but the patents of Lord Baltimore, issued prior to 1668, for lands South of that line, *were not saved by the agreement between Calvert and Scarbrough* to the patentees of Maryland ; they retained no title whatever in any name, or by any authority, and all patents granted by Lord Baltimore, subsequent to 1668, South of that line, were of course void. So much for the main territory West of Pocomoke river and North of Pocomoke sound and East of Tangier sound, and for the islands of the bay and Tangier sound and Pocomoke sound.

We now come to the territory East of the Pocomoke river, beginning at that river, where the Calvert and Scarbrough line runs East from Watkins point on the West, "over Pocomoke river."

To Robert Holston, (erroneously here Houston,) April 5th, 1666 : 500 acres ; bounded by the Pocomoke on the Northwest, and by Holston's creek. It was to near this Holston's that the line of Calvert and Scarbrough run.

To Col. E. Scarbrough, September 10, 1664 : 2,000 acres, South by Crooked creek, near Pocomoke river.

To John Wallop, June 10th, 1664 : 400 acres at Pocomoke.

To Robert Pitts, October 2, 1663 : 3,000 acres ; North by the Pocomoke and West by the bay, (meaning Tangier sound or bay.)

To same, March 12th, 1662 : 1,000 acres at Pocomoke.

To John Williams, April 5th, 1666, (same day as Robert Holston's) :

Patent 500 acres, (same quantity as Robert Holston's,) W. S. W. by Robert Holston's ; N. West by Pocomoke river.

To Thomas Davis, April 5th, 1666 : 400 acres on Pocomoke.

To James Henderson, April 5th, 1666 : 400 acres next Thomas Davis on the Pocomoke river.

To John Davis, April 5th, 1666 : 700 acres, North by Pocomoke, West by Davis Branch.

Henry Smith, April 5th, 1666 : 1,700 acres on Pocomoke.

—— Radcliffe, November 9th, 1666 : 1,200 acres ; Pocomoke, on Crooked creek.

To Daniel Forecraft, October 30th, 1669 : 600 acres, South side of Pocomoke river.

D. Browne, October 16, 1672 : 3,700 acres, Jolls, (now called Jolly's Neck,) Pocomoke river.

Capt. S. Littleton, September 9th, 1674 : 400 acres at Pocomoke, formerly, &c., &c.

John Washburn, April 30th, 1679 : 600 acres, Pocomoke river, M. Lester's land.

Col. S. Littleton, April 30th, 1679 : 150 acres on the Forehead Neck, N. of King's creek at Pocomoke, on the divisional line.

John West, November 25, 1679 : 2,500 acres, Pocomoke, North of Messongo creek, and embracing Georges island in the Pocomoke river.

John Tankard, October 2, 1680 : 2,000 acres, between Pocomoke and Chingoteaque on the main.

Colonel John Custis, September 22d, 1683 : 4,600 acres, at Jolles or Tolls neck. Eastern part, 2,000 acres, patented by Edmund Scarbrough.

Adam ——, April 20th, 1686 : 600 acres at Pocomoke.

To William Brittingham, November 7th, 1700 : 96 acres, beginning at Pitts alias Kings creek, on the divisional line, &c., &c.

Nathaniel Littleton, October 24th, 1701 : 150 acres on Forehead neck, North of Kings creek, on Pocomoke.

Captain Daniel Jenifer, of Maryland, October 2, 1680 : 2,500 acres, between Crooked creek and the Pocomoke on the North Messango.

In these 23 patents, granted about the date of the Calvert and Scarbrough line, some shortly before and some shortly after 1668, we find 31,300 acres at and on the divisional line where it ran over the Pocomoke river, and thence to the mouth of the Pocomoke and the islands of the Pocomoke river, and also between the Pocomoke river and

Chingoteague creek East. Many of these patents name the divisional line of the two colonies as one of the lines of the patents.

Next following the line of Scarbrough and Calvert, running East, we find the following patents:

To Daniel Selby, November 9th, 1666: 600 acres on the Swanseacute alias Great Mattapony.

To Edward and John Smith, November 9th, 1666: 500 acres on the Mattapony.

John Pike, November 9th, 1666: 400 acres North of Dan'l Selby, at Mattapony.

To Daniel Jenifer and Ann Toft, his wife, February 12, 167½: 11,300 acres, sea-board. Stokelys branch, 5,000 acres. Neck between Chingoteague and Swanseacute on the *divisional line.*

J. Wallop, alias, &c., April 9, 1674: 450 acres, Great Mattapony alias Swanseacute, on the divisional line, &c.

Major Edmund Bowman, October 5th, 1674: 2,264 acres North side of Swanseacute alias Great Mattapony on divisional line.

These six patents granted 15,514 acres at and near Swanseacute on the divisional line.

Next following the line of Calvert and Scarbrough East to the shore of the main land on the sea-side:

Colonel E. Scarbrough, June 22d, 1664: 3,000 acres North of Chingoteague creek.

Lieut. Col. John Wallop, April 20th, 1670: 3,050 acres, Southside of Chingoteague creek.

Daniel Jenifer, of Maryland, February 12th, 167½: 11,300 acres, Stokelys branch, sea-board.

Ann Toft, of Accomack, Daniel Jenifer's wife, February 12th, 167½: 5,000 acres, neck between Chincoteague creek and Swanseacute creek "on the divisional line of Maryland and Virginia."

Samuel Taylor, April 9th, 1674: 700 acres, Chincoteague creek.

Edward Robins, May 27, 167⅝: 680 acres at Chincoteague, beginning at divisional line between Virginia and Maryland.

Col. S. Littleton, April 4th, 1678: 1,000 acres at Chincoteague creek.

Thomas Gascoine, July 15th, 1715: 1,093 acres, head of Chincoteague creek.

These eight patents, between Swanseacute and the sea-side of the main, containing 24,730 acres, at and near Chincoteague creek, *on the divisional line*, &c.

Then following the Calvert and Scarbrough line East to the islands between the main land and the sea beach of Assateague island.

Hill Drummond, April 24th, 1700 : 96 acres, Popes island, *on divisional line.*

Thence to the Atlantic shore on the beach of Assateague island :

Col. Daniel Jenifer and Wm. Stevens, April 16, 1683 : 200 acres South end of Assateague island on the divisional line.

Daniel Jenifer, April 20th, 1687 : 3,500 acres, Assateagus island, on the divisional line.

John Morris, April 28th, 1691 : 300 acres, between Chincoteague and Assateague.

Wm. Kendall, April 29th, 1692 : 2,729 acres, Northeast end of Chincoteague, including Piney point.

John Robins, 29th April, 1692 : 2,765 acres, Southwest end of Chincoteague island and island of marsh.

Capt. John Custis, April 21st, 1695 : 250 acres, Northern end of Chincoteague island.

Wm. J. Aydelotte and Benj. Blades (one of the present commissioners of Maryland), 30th July, 1841 : 880 acres on Assateague island.

These seven patents granted 10,624 acres on Assateague and Chincoteague islands to the ocean, between it and Popes island, two of them on Assateague calling for the divisional line between the colonies of Virginia and Maryland. I have cited those on Chincoteague island to show that no colonial line ever cut that island. Its North end is nearly up if not quite to the line of 38° N. L. By the best charts furnished by the coast survey office, the parallel of 38° passes the North end of Chincoteague three-quarters of one mile, and the Calvert and Scarbrough line cuts Assateague island North of that parallel two miles. It is just about as far North of that parallel on the sea side of the peninsula as it is South of it on the bay side thereof. A right line from Smiths point to Swanseacute, or from the same point to the terminus of the Scarbrough and Calvert line on the Eastern shore of Assateague island, either will cut the main land at Cedar straits. Drawn from Smiths point due East it terminates on the sea shore South of Chincoteague island, and it would give to Maryland an average breadth of eight miles of territory East of the Pocomoke river to the sea, which at no time did she ever claim. *East of that river to the sea South of the Calvert and Scarbrough line,* Maryland never laid a patent. There her citizens on the line pay

taxes in both states now; and Mr. Aydelotte, of this commission, by accepting his patent on Assateague island—anywhere on it—recognizes the fact that the Calvert and Scarbrough line runs North of an East line from Cedar straits or from Smiths point.

Besides the foregoing patents from the Accomac Index, we add the following from the Northampton Index:

Miles Gray, March 26th, 1672: 400 acres, branch of Great Mattapony, alias Swanseacute.

Daniel Jenifer, February 12th, 167½: 5,000 acres, but called Chincoteague, granted to E. Scarbrough in 1664. Residue lying on the N. W. side of the 3,000 acres.

William Whitington, October 2d, 1672: 5,000 acres. All Chincoteague island.

Capt. John West, October 3d, 1672: 1,000 acres at Chincoteague (on the main), South by Capt. Richard Hill and Northeast by Capt. Daniel Jenifer.

Thomas Nickerson, October 9th, 1672: 400 acres at Chincoteague, adjoining John Wallof.

John Robins, October 7th, 1672: 500 acres at the seaside, Southwest by the land of Southey Littleton, Northeast by the divisional line between Maryland and Virginia.

These patents granted 12,300 acres at and near the line.

The quantity of land in the grants of these different sections amounts to 95,952 acres, nearly one hundred and fifty square miles, on a line from the Chesapeake bay to the ocean, forty-five miles in length from the Western shore of Smiths island to the Eastern shore of Assateague island. And the part of this line North of the 38th parallel, lying East of the Pocomoke river, Maryland don't pretend to dispute, whilst she claims all South of the line West of the Pocomoke river and North of the Pocomoke sound, though the line there is South of the 38th parallel.

These are strange facts, to be accounted for only by oysters! Virginia granted an average of three and a third square miles for every mile on this line.

County Bounds.

We can't find any North bounds of Accomack in Virginia, except the Virginia and Maryland line. But the commissioners on the part of Maryland have produced a commission from the proper authorities of the county of Somerset, Maryland, to certain commissioners, to

"*lay off so* much of Smiths island as lies within the body of Somerset county aforesaid, into a separate and additional election district, before the 1st April, 1835. Commission is dated 8th April, 1835. Return dated 16th June, 1835." "In pursuance of the said order, we have viewed, laid out, and return as follows for said election district, to wit: Beginning on the East side of said island, at a place well known by the name of 'Drum point;' thence Westerly cross to the bay to a hammock called Sassafras, lying on the bay shore; thence by and with the bay up to Kedge's straits; thence by and with the sound to 'Drum point.' And that we at the same time have elected the Methodist meeting house as the most suitable and convenient place for holding the elections in said district."

By embracing all of the island which laid in Somerset county, it embraced all of it lying in Maryland. Somerset county extended North to the Nanticoke.

Here then we have a late report of Somerset's own commissioners setting forth all of Smiths island in Maryland. The district bounds began at "Drum point." See the charts of coast survey. "Drum point" is North of Little Annamessex river on the main. It is but *one mile* south of the 38th parallel of latitude, and below Barnes point, on the East and West line of which the stones (Potomac stones) apparently were found, said to be boundary marks between the two states. Yet John Cullen, (see his deposition,) one of the commissioners, swore before these present commissioners that he always deemed and held Horse hammock, on Smiths island, over two miles South of "Drum point," to be in Maryland, and Maryland appointed a justice of the peace residing there as late as ——. (See deposition.)

But John Cullen ought to have known better. He was the justice who arrested John Tyler, a Virginian, for catching oysters at Filleby's Rock, North of the Great Rock, arrested just off Horse hammock, in the schooner Fashion. Tyler was acquitted by the Somerset court on the ground he was not oystering in Maryland waters; sued Cullen in the Circuit court of 8th judicial circuit of Maryland, held 3d October, 1854, for arresting and detaining him and his vessel, and recovered a judgment for $1,000 damages and costs. See records of the court appended.

This was as late as 1854, and the Hon. Isaac D. Jones, Esq., was one of the counsel in the case for Cullen. See the two records.

Again, the commissioners of Maryland exhibited "Maryland council

proceedings, Liber H. H., folio 268. Commission to Stephen Horsey and others, to lay out a county, bounded on the South by a line drawn from *Watkins point,* being the North point of yt bay into which the river Wighco, (formerly called Wighcocomaco, and afterwards Pocomoke, and now Wicocomaco again,) &c., to the ocean on the East, Nanticoke river on the North, and by the sound and Chesp. bay on the West, to be erected into a county, by the name of Summerset, in honor of our dear sister, Lady Mary Summerset." 22d August, 1666.

Now this clears away all mists from these marshes obscuring doubts about where *Watkins* point was *and is.* Smith's Map placed it exactly where this council of Maryland describes it, and exactly where Calvert and Scarbrough ascertained it to be in 1668. The point described by this paper is undoubtedly the point of Watkins point *at Cedar* straits. Calvert and Scarbrough did not start at that part of Watkins point, but at the extremest part of its Westernmost angle. This is tested by the line being a right, East line. Then we have certified beyond all peradventure that Maryland authorities, metropolitan and county, colonial and state, have known where Watkins point was all the time ever since 1666. *That happened to be exactly two years before the commissioners, Calvert and Scarbrough,* 1668, *determined* the part of Watkins point from which the line should be run East, ordered by the charter of Maryland to be a right line. Cedar straits never was and is not now the Westernmost angle of Watkins point, and did not draw the commissioners, in 1668, that far South; but the legal and logical effect of their "articles of agreement" was to draw the Southern boundary of Somerset county from Cedar straits up to the North headland of Little Annamessex river to another part of Watkins point. And what becomes of all the speculation about a proclamation of Governor Harvey, of Virginia, recognizing Maryland's right of Indians to traffick down to Onancock, below Little Watts island? What of the theory of the washing away of Watkins point? What of the traditions of the sayings of King Nelson—by the by, in justice to his majesty's knowledge of the affairs of the god Terminus, he may "have known *Summerset county's* boundary to have been fixed on the North end of Big Fox island at the Cedar straits in 1666. After these records, can there be any pretence of a doubt about where Watkins point is, or is not all doubt about where it was, and is now, a mere pretence?

Again there is another record of Summerset county, viz.: "The following is among the orders agreed upon by ye commissioners of Summersett countie, this 17th January, $166\frac{8}{7}$."

"Present: William Stevens" (the assignor of Pittscraft to Henry Smith), "Captain Wm. Thorne, Mr. James Jones, Mr. John Winder and Mr. Henry Boston, Mr. George Johnson and Mr. Stephen Hersi, high sheriffs.

"The highway for the county of Sommerset "from ye landing place upon Capt. Goyeder's land in Pocomoke river to Maurumsco dambs, near ye house of Robert Kignitt, and from thence doune to the head of Thomas Price's neck to ye head of William Coleburne's creek. And from ye head of Will. Colburns creek to *Watkins point* from ye dambs yt lyeth by Robert Hignetts to ye lower dambs yt lyeth at the head of Annamesseck river; from thence to ye lower dambs yt lyeth at ye head of Back creek of Manokin river, and from thence to ye head of Manokin river, and from thence to the head of Wicocomoes creek." This is from a certified copy.

Again: Same day and year is—

"*The bounds of Annamessicke Hundred.*

"Annamessicke, beginning at *Watkins point*, running to the mouth of Marumsco creeke, up ye Westermost side of ye said creeke to Marumsco dambs, and from *Watkins point* to the Northpointe of Annamassicke river, and from thence running up ye midst of ye neck of land 'called desert.'"

Thus the bounds of county, of highway, of hundred, of Summerset county, called for *Watkins point* North of Pocomoke sound.

Again: See same book of records of the council of Maryland. It is supposed Summerset was organized out of Dorchester county, Maryland. Worcester county, adjoining Accomac county, Virginia, was laid off from Summerset. Now Worcester borders on Virginia by a right line East, and has never been disputed or questioned since 1668. Worcester was laid off in 1742 on that part of the line formerly of Summerset. Is that *right line* "agreeable with" an East line from Cedar straits or an East line from the North headland of Little Annamessick? Michler's Map and line, continued by De la Camp, will show.

Somerset's Southern boundary was obliged to be a right or an East line. Part of her Southern boundary became the Southern boundary line of Worcester county, which was carved out of her. Then, when Maryland, in 1742, ascertained the right line for the Southern boundary of Worcester county, she at the same time conceded and admitted what was Somerset county's right line on her Southern border. If the Scarbrough and Calvert line was the true Southern bounds for Worcester county, it was of course the true Southern bounds for Somerset county.

See copy of deed to John Tyler from Henry Smith of the county of Summerset, Maryland, 1693, conveying Pittscraft on Smiths island. Also, copy of paper found in the possession of Alexander Tyler on Smiths island, describing a survey of land, part in Virginia and part in Maryland. Also, copy of deed from Elisha Crocket and wife to Richard and William Evans, found on Smiths island, dated 30th August, 1828. Also, copy of deed from Jacob Sparrow and Teakle Evans, found on Smiths island, dated 24th September, 1844.

We are informed also by Mr. Aydelotte, one of the commissioners on the part of Maryland, that a patent ought to be found from Virginia for a part of "Troy point, owned by John Mason; the extreme Northeast main land of Accomac; a large body near to Sandy Hill in Worcester county, Maryland, part in Accomac county, Virginia, and part in Worcester county, Maryland; all now occupied by Judge John R. Franklin, who now pays taxes in both Maryland and Virginia."

If these tests of the true boundaries of the two colonies and states of Virginia and Maryland, both on the Eastern and Western shores of the Chesapeake, are not sufficient, there are abundant other proofs in the county surveys of lands under private deeds; of old vestry books of the Church of England in Virginia during colonial times; and of ferries (as to which see McDonald's first report), and of maps. We have not been able to examine and elaborate any but the last. But there is one test which is singular—the location of the Crisfield railroad. The line of De la Camp, continuing the Calvert and Scarbrough line West from Swanseacute, cuts the Southwestern corner of the wharf of that company at Chrisfield. The line passes James Taw's house at the head of Somers cove, and cuts the Southwest corner of the wharf of the Chrisfield railroad. How came that road located at its terminus exactly adpunctum on the Calvert and Scar-

brough line? Did Tyler's trial and acquittal, and his recovery of $1,000 in Maryland's own circuit court of Summerset in 1854, wherein Mr. Crisfield, after whom the town of Crisfield is called, was counsel for Tyler of Virginia, and Mr. Jones, of the present commission, was counsel for John Cullen, of the election district commissioner on Smiths island, teach the stockholders of that railroad where, to a pin's point, to terminate that road? If it was accident to terminate where it does, it was an accident of so rare occurrence that any insurance company might insure against its recurrence at the least appreciable fraction of one per cent.

We forego such further enquiries. They are vain. We can't treat Watkins point, and the part of it from which the boundary line East was run "over the Pocomoke river" as a fable or a myth. It was agreed, it was sealed, it was approved and established. If not exactly a due East line, it was near enough to a right angle with the meridian to be deemed established. It was established by a sealed and recorded and admitted agreement, and there is no possibility of destroying its identity or doubting its verity. Tradition can't run against the record; and limitations can't run against a state boundary. That question the Supreme court of the United States has decided in the case between Massachusetts and Connecticut.

We have but few words to add about maps. We will abide by Smith's Map of 1629; by Bowen's Map for the Eastern shore boundary, and by the map of the treaty of 1763; and by Augustine Herman's Map, furnished or adopted by Lord Baltimore, and by Lord Baltimore's claim against Penn: that the boundary on the Eastern shore was, at the time of 168½, settled by commissioners, and he claimed so far South only as Watkins point. The whole matter was concluded against all theoretical speculations, and against all time of possession, and against all traditions, and patents, and ferries, and boundaries of counties, and hundreds, and highways, in 1668, by Philip Calvert and Edmund Scarbrough. It is unnecessary, and would be but supererogatory to recapitulate the evidences of right to the whole river of Potomac.

Virginia claims the river Potomac to the left or North bank on the Western shore, and to Scarbrough and Calvert line on the Eastern shore of the Chesapeake, from Point Lookout to the extremest part of the Westernmost angle of Watkins point, the promontory formed by the North headland of Little Annamessex river or creek, on the

Eastern side of Tangier sound, which headland, or promontory, is the initial and terminating point of survey between the two States of Maryland and Virginia, ascertained, agreed and fixed as described A. D. 1668, by and under their joint and several proper authorities, and by them approved and adopted.

HENRY A. WISE,
D. C. DEJARNETTE,
WM. WATTS,
Commissioners on the part of Virginia.

C.

APPENDIX

TO THE

REPORT OF VIRGINIA COMMISSIONERS

ON THE

MARYLAND AND VIRGINIA BOUNDARY.

EXTRACTS

FROM

LETTER OF E. W. HUBARD TO H. A. WISE.

The following is a letter from the Hon. E. W. Hubard to Mr. Wise, on the Boundary Commission, from his residence in Buckingham, on the subject of the chartered limits of Virginia, as reported upon by him when in the H. Reps. of the Congress of the United States:

"SARATOGA, SEPT. 6th, 1872.

Hon. H. A. WISE:

"My Dear Sir—Your letter asking me whether I had the 'original' paper written by Mr. Tazewell for me in support of the right and title of Virginia to the land West of the Ohio, ceded by Va. to the U. States in 1784.

"Having solicited Mr. Tazewell and Mr. B. W. Leigh to aid me in vindicating the right and title of Virginia to the land ceded the U. States' Government, which had not only been assailed, but *denied* by Hon. H. Hall, of Vermont, in one or two most villainous reports; one a SELECT committee of 5 members, composed of Messrs. Goode and Goggin, of Va., and Stanley, of N. Carolina, and Cane Johnson, of Tennessee, and Hiland Hall. The Legislature of Virginia, nevertheless, again appealed to Congress in behalf our *Revolutionary* land-bounty claimants, asking Congress to pay the claims *outstanding;* many being amongst the best claims, as for instance for Gen'l Thomas Nelson, and others, &c. * *

"These resolutions from our legislature were *referred* to the Committee on Public Lands. When taken up by the chairman of the committee, he (Collamer), in a contemptuous and sneering manner, held the resolutions up, and asked what member of the committee would *venture*, after the crushing and damaging reports of H. Hall,

to again recommend to congress to pay those claims? Each member *declined*, and he appealed to me. Of course I could not; so I undertook the task, and decided to do all I could in behalf of the state, her citizens, her honor, and rights. Being, as you know, a farmer, &c., I ventured to invoke the aid of two of our greatest men.

* * *

"When the report was printed by congress I had copy each *bound* for Mr. Tazewell and Mr. Leigh, and I wrote on those copies the portions furnished and written by each one of them, and forwarded them by mail. As requested by Mr. Tazewell, *I returned to him his manuscript in full.* It was very neatly and *elegantly* written on foolscap paper. I may add, that I adopted ALL Mr. Tazewell wrote, and *nearly* all furnished by Mr. Leigh, and only omitted portions wherein both urged the same views; and might well have left out *more* of Mr. Leigh's, as Mr. Tazewell had argued the points. And, even then, curtailing Mr. Leigh's contribution, I had to retain portions presenting similar views in some respects to those urged by Mr. Tazewell.

* * * * * * *

"Mr. Leigh not desiring the return of his manuscript, it was perhaps lost after being copied. Both contributions bore evidence of careful study and preparation, and were very well and neatly written.

* * * * * * *

"See Report, 28th Congress, 1st Session, No. 457; Issue of Scrip, &c., &c., May 2d, 1844.

"Mr. Tazewell's portion of this report commenced at page 3, and closed at page 21.

"Mr. Leigh's commenced at the close of page 21, and closed at page 29.

"Yours truly,

(Signed) "E. W. HUBARD."

VERBATIM COPY

OF A

CONGRESSIONAL REPORT.

28th CONGRESS, 1st Session. | Rep. No. 457. | HO. OF REPS.

ISSUE OF SCRIP, &c.

[To accompany bill H. R. No. 352.]

MAY 2, 1844.

Mr. HUBARD, from the Committee on Public Lands, made the following

REPORT:

The Committee on Public Lands, to whom the following resolutions were referred—the first on the 4th of January, and the second on the 25th of March, 1844, viz:

1st. "*Resolved*, That the Committee on Public Lands be instructed to inquire into the expediency of reviving the law authorizing the issue of scrip upon Virginia land warrants, and of authorizing the reception of such scrip, and all other scrip issued by the United States in lieu of, or in payment for, land or land claims, to be received in payment for lands subject to private entry in all land offices in the United States."

2d. "*Resolved*, That the Committee on Public Lands be instructed to inquire into the expediency of making an appropriation for the payment of Virginia revolutionary land bounty warrants, which have been issued, and are still due, to revolutionary soldiers and officers, or their heirs."

submit the following report

That in the investigation of the subject referred to in the foregoing resolutions—adopted on the motion of Hon. G. M. Bower, of Missouri, in the first instance, and on the motion of Hon. D. M. Barringer, of North Carolina, in the second place—the attention of the committee was particularly called to report No. 436, 1st session of the 26th Congress; and to report No. 1063, 2d session of the 27th Congress. The first report alluded to, emanated from the Committee on Revolutionary Claims; and the second, from a select committee; both of which, however, were introduced into the House of Representatives by Hon. H. Hall, of Vermont.

As the subject now to be considered has been several times reported upon by committees of the House of Representatives, it is deemed proper to examine those reports, with the view of ascertaining the various points of difficulty, as well as their relative merits, so that a full and fair statement of the case may be presented. The importance of the subject, no less than the *manner* in which it has been discussed, demands a frank and candid review of some of the more prominent allegations urged in those reports against the justice and validity of the claims to bounty land remaining unsatisfied. Equally obnoxious to just criticism is their concluding recommendation, based, as will hereafter be shown, upon the most extravagant assumptions, and suggesting to this Government, under such circumstances, to disregard its positive stipulations. Those reports, after urging various *conjectural* estimates about the *number* of persons who might be entitled to bounty lands, so as to arrive at the least possible number; then by scanning and *denouncing* in the most extravagant terms a *given* number of claims which *had* been allowed;—thus, by *such* a combined method of magnifying the proportion of bad claims, and diminishing the number of those which were at any time due, they endeavored to dissuade Congress from doing justice. But, notwithstanding previous committees have resorted to this double system of destroying the claims, yet, even in their *own* estimation, they had *failed* to demolish *all* of them. However, it seems they had, in their opinion, at least, so crippled and damaged them in the public estimation, that they could with impunity venture to suggest to Congress to give the "*coup de grace*" to all those claims which they deemed *impregnable* to their assaults.

Nor has the learned effort which has been made to impugn and invalidate the ancient limits and boundaries of Virginia, and her right to the immense northwestern territory which she ceded to the Federal

Government, escaped observation. This topic, however irrelevant all enlightened statesmen must admit it to be, has, it seems, been introduced, along with other no less pertinent considerations, to disparage whatever of credit it has heretofore been conceded Virginia justly acquired by ceding to this Government her northwestern territory, and to that extent to impair the equitable rights of the claimants, and to justify Congress in refusing to comply with its stipulations entered into with Virginia at the time she made her deed of cession. In report No. 1063, 2d session of the 27th Congress, from pages 49 to 63, an elaborate effort is made, in the first place, to distort and curtail the ancient boundaries of Virginia, in the second, to show that she had no chartered or colonial rights; and in the third, no substantial or valid claim to the territory which she ceded to this Government. We propose, first, to examine the arguments of Mr. Hall upon each of the three points last mentioned, and shall take them up in the order in which they are stated. We are induced to take up the several objections urged in the reports alluded to, not in the order in which they are presented, but rather in their chronological order, because it enables us to present a more connected and intelligible view of the subject which has been referred to us. To appreciate more fully the bearing which it was designed the points just stated should have on the subject now to be considered, we will cite the proposition discussed in report No. 1063, page 43, which gave the author of the report a pretext for indulging in the course of argument we propose first to review. It was as follows: "*That the United States are under obligations to Virginia to satisfy the claims.*"

It seems to have been supposed, by the committee formerly having this subject under consideration, from the very great extent of learning devoted to this branch of their argument, as presented in their report, that, if they could divest Virginia of all tenable right and title to the territory which she ceded to this Government, her citizens would necessarily be deprived of one of their strongest reasons for appealing to the equity and liberality of Congress. But it will readily be perceived that any "*ex parte*" and laborious effort made by a committee of the House of Representatives to invalidate the just claim of Virginia to the land which she ceded, and thereby to detract from her dignity and character, imposes upon Congress the duty of "*audi alteram partem.*" Indeed, it is most obvious that, unless this is done, a decision cannot be impartial or just. After a full examination of this branch of the subject, having arrived at conclusions en-

tirely the opposite of those expressed in the report under review, we proceed to advance the facts and reasons which have irresistibly led us to differ with Mr. Hall "*toto cœlo.*"

To determine the original limits of the country now called Virginia, it is necessary that we should go back to a period of history antecedent to even the discovery of this region. In this history, we shall find that the whole continent of North America fronting upon the Atlantic ocean, was called Virginia, long before any portion of that particular district that now bears this name had been discovered. The Spaniards, who had first discovered the southern part of this continent in 1512, had named it Florida, on account of the gay and beautiful appearance of the great variety of flowers they found flourishing there. But afterwards, in 1584, when the English also discovered it further to the northward, Queen Elizabeth was pleased to name the country Virginia, as a memorial that this happy discovery had been made in the reign of a virgin queen.—(See Hakluyt, vol. iii, page 246.)

By letters patent granted by Queen Elizabeth to Sir Walter Raleigh, which bear date March 26, 1584, she gave to him, and to his heirs and assigns, "free liberty to search for and find such barbarous lands, not possessed by any Christian people, as to him may seem good, and the same to occupy and enjoy forever." This grant was without any other definite limits. (Hakluyt, vol. iii, page 243; also, Williamson's History of North Carolina, vol. i, page 219.)

In pursuance of this grant, Sir Walter Raleigh fitted out a small squadron, under the command of Sir Richard Greenville, to take possession of his newly acquired and unbounded territory; and a small settlement was actually established, on the 25th of August, 1584, on Roanoke island, in the present state of North Carolina. This was the first settlement made by the English in Virginia, and the first British settlement established anywhere on the continent of North America.—(See Halkuyt, vol. iii, page 251.)

Owing to many causes, and after various adventures, which it would be unnecessary to mention here, this first settlement was abandoned by its founders in the year 1590; and we know nothing certainly of the fate of the unfortunate colonists who were then left there.—(See Smith's History of Virginia, vol. i, page 105.)

No other attempt to settle any colony in Virginia was made during the reign of Queen Elizabeth, who died in 1603, and was succeeded by King James the First. But in the year 1606, this prince issued

his letters patent for that purpose, which letters bear date April 10, 1606. By these, he divided that portion of Virginia which stretches from 34° to 45° of northerly latitude, into two districts. In one of these districts, called the First or Southern Colony of Virginia, he authorized Sir Thomas Gates, and others, his associates, mostly resident in London, to plant a colony wherever they might choose, between 34° and 41° of north latitude; and he vested in them a right of property in the land, extending along the seacoast fifty statute miles, on each side of the place of their first plantation, and reaching into the interior 100 statute miles from the seacoast. The other of these districts, called the second or Northern Colony of Virginia, he allotted for the settlement of Thomas Hanham, and other, his associates, mostly residents of Bristol, Exeter and Plymouth. These he authorized to plant a colony, wherever they might choose, between 38° and 45° of north latitude, and he gave to them a territory of similar limits and extent to that given to the first colony. He provided, however, that which ever plantation of the said two colonies should be last made, should not be within 100 miles of the other, that might be first established. One of these two colonies (the first) was soon distinguished as the London Company; and the other (or second) was known as the Plymouth Company; but, in after time, these names were dropped, and the name of Virginia, which was at first applied to both the colonies, was retained by the southern colony only, while the northern colony was called New England.—(For a copy of this charter, see Stith's History of Virginia—appendix, No. 1.)

The London Company commenced its operations before the Plymouth Company. The former fitted out a small ship of 100 tons burden, and two barques, the command of which was given to Captain Christopher Newport, who sailed from Blackwell, December 19, 1606, his first destination being Roanoke island, in quest of the unfortunate adventurers left there many years before. Newport had a very long passage, and before he reached his destination, his little fleet encountered a severe southern gale, the violence of which was such as to oblige them to scud before it under bare poles one whole night. This was fortunate; for, in running in for the land the next day, (April 26, 1607,) they luckily fell in with the capes of Chesapeake bay, and entered this great estuary. Pursuing their course along the southern shore of the bay, they came to the mouth of a noble river, called by the natives Powhatan, but which Captain Newport named

James river, after his sovereign. Up this river they sailed about 40 miles from its mouth, in search of a proper place whereon to plant the intended colony. Such a place they at length found, in a peninsula on the northern side of the river, connected with the mainland by a narrow isthmus of naked sand, easily to be defended against any attack, let it come from what quarter it might. Here the adventurers landed on the 13th of May, 1607, and here they established their first habitation, to which they gave the name of "James City," in honor of King James I, the reigning monarch.—(See Smith's History of Virginia, vol. i, book iii, chap. i, page 149, &c.)

The facts stated above will enable us to determine, and with great accuracy, the limits of the grant made to the London Company, by their first charter of April 10, 1606. If a meridional line be drawn through James City, and extended each way to the distance of fifty statute miles from it; if parallels be drawn through the extremities of this meridian, and extended to the seacoast; if one hundred statute miles from thence be laid off upon each of these parallels; and if a straight line be drawn from the extremity of one of them so determined, to the extremity of the other, the diagram so to be constructed may be considered as a square, the base of which will be one hundred statute miles, and its area ten thousand square miles. Such a diagram, so constructed, will be delineated in precise accordance with all the calls of this charter of April 10, 1606.

We need but cast our eyes upon any map of this region to determine the ridiculous absurdity of confining the territory intended to be granted by such limits. The only apology that can be offered for such an act, is, that the charter was granted before the country to which it was designed to apply was discovered. More than one moiety of all the lands within the prescribed limits will be found covered by wide and deep water-courses. By these, the dry land will be found divided into many small necks, widening as you advance upwards, and separated from each other by streams, the width and depth of which were such as to render them often impassable, and always dangerous; and the first plantation intended to be, and that long continued to be, the metropolis or chief place of the colony, will be found very near the western and most exposed frontier of the territory. Hence, every hope of the future prosperity, and even of the security and safety of the infant colony, required that the limits given to its territory should be speedily changed and enlarged.

This was not a matter of speculation. In the year 1608 the coun-

try had been explored in every direction, throughout its whole length and breadth, and far beyond either, by the celebrated Captain John Smith, whose wonderfully accurate description of it, given in his report, we still have. (See Smith's History of Virginia, vol. i, book 3, chapters 5 and 6, and the map.) Induced by this report, as well as by many defects experience had proved to exist in the form of government for the colony that had been prescribed by their charter, the London Company applied to the King to alter this charter; and it pleased his Majesty, King James the First, to grant their petition. Accordingly, on the 23d of May, 1609, he issued new letters patent of that date, for this purpose. At the date of these new letters patent, nothing existed to prevent such an extension of the limits of Virginia as was thereby made, because no settlement had then been made anywhere by the Plymouth Company; so that the whole country granted was as open to the new grant as it had been in 1606.

Before this second charter was granted to the London Company, the well-known headland on the northern side of James river, at its mouth, had been discovered and called by the name it still bears—Point Comfort. Taking this well-known and well-established position as a starting point, the new charter granted to the company "all those lands, &c., situate, lying and being in that part of America called Virginia, from the point of land called Cape or Point Comfort, all along the seacoast, to the northward, two hundred miles; and from the said point of Cape Comfort, all along the seacoast, to the southward, two hundred miles; and all that space and circuit of land lying from the seacoast of the precinct aforesaid, up into the land, throughout from sea to sea, west and northwest; and also all the islands lying within one hundred miles along the coast of both seas of the precinct aforesaid."—(See a copy of this second charter in Stith's History of Virginia, appendix No. 2, page 8, &c.)

As one of the purposes of this second charter is declared in it to be "to grant a further enlargement and explanation of the former grant" of 1606; and as no other change is made in the mode of determining the new and enlarged limits, from that required for determining the old boundaries, except that the precise point of Cape Comfort is substituted for James City, we are bound to adopt the same mode of determining the new limits which had been adopted and approved in the former case.

Therefore, if a meridional line be drawn through the point of Cape Comfort, and extended each way to the distance of two hundred miles

from thence; if parallels be drawn through the extremities of this meridian, and extended from sea to sea, (*i. e.* from the Atlantic to the South sea, or Pacific), the diagram so to be constructed may be considered a parallelogram. The base of this parallelogram will be the seacoast of the Atlantic, having a meridional length of four hundred miles, bisected by the parallel of the point of Cape Comfort, and the altitude of this parallelogram will be the distance from sea to sea.

If any one is curious to know why Virginia was extended precisely two hundred miles to the north of the parallel of the point of Cape Comfort, his curiosity will be satisfied if he will take the trouble to calculate the difference of latitude between that parallel and the more northere parallel of 40°. In making this calculation, he must make some small allowance, however, for the trifling error caused by the imperfection of the clumsy instruments used in 1609 for making observations of latitude; as well as for the erroneous opinion then entertained as to the length of a degree of a great circle in English statute miles. We know now the exact quantity of each of these errors in our case; but it must be recollected that one of them (the last) puzzled Sir Isaac Newton almost a century after 1609, and delayed the publication, because (owing to this error) he could not demonstrate the truth of the greatest of his astronomical theories. Correcting his calculations in this way, the curious inquirer will so discover that two hundred English statute miles, measured along a meridian from the parallel of the point of Cape Comfort, will carry him to the parallel of 40° north latitude; which last parallel, as will be shown hereafter, was then made the common boundary between the two great districts of Virginia and New England.

The distance from Point Comfort north being determined in this way, there was no possible objection to adding an equal distance from the same point south; for in that direction no grant had then been made which, by any possibility, could interfere with the extension of Virginia. Thus the new boundaries given to Virginia by the charter of May 23, 1609, were, in fact, these: On the north, the parallel of 40°; on the south, the parallel of 34°; on the east, the Atlantic ocean, between these parallels; and on the west, the Pacific ocean, between the same parallels.

These wide limits were very much contracted in after time, in many different ways: 1st. By the grant of Maryland to Cœcilus Calvert, baron of Baltimore in Ireland, made by Charles the First, on the 20th of June, 1632. 2d. By the grant of North Carolina to the Earl of

Clarendon and others, proprietaries of that province, made by Charles the Second, June 30th, 1665. 3d. By the grant of Pennsylvania to William Penn, made by Charles the Second, March 4th, 1681. 4th. By the treaty made between Great Britain and France (commonly called the treaty of Paris, because it was concluded at Paris), on the 10th day of February, 1763; and, 5th. By the constitution of Virginia herself, adopted June 29, 1776. Deduct from the area of the parallelogram before mentioned the several territories carved out of it by the various acts to which we have referred above, and the remainder of this area will represent what Virginia was on the 4th day of July, 1776—when she too, like the other colonies, became a free, sovereign, and independent State.

Having shown that the description of the boundary given to Virginia by her second charter, in 1609, was neither indefinite nor unintelligible, as this report asserts, and has attempted to prove under its first head, we will now examine the second proposition. In this, the author seems to have changed his opinion upon the subject; because he here attempts to show that the boundary called for by this charter is quite definite and intelligible, being the arc of a circle. The centre, radius, and chord of this arc he states very plainly; but with what truth, it will be our present purpose to examine.

Not being able even to imagine a reason which could have induced the grantor of this charter to establish a confined circular boundary as that of the new colony, then very recently settled in Virginia,—this, too, when the year before only (in 1608), the same King had granted to Sir Robert Heath that immense territory, comprehending six degrees of latitude in breadth, and extending in length along one side of Virginia, from the Atlantic to the South sea; and had granted a few years afterwards (in 1620) to the Duke of Lenox and others, another vast territory on the other side of Virginia, including eight degrees of latitude in breadth, and extending in length from sea to sea,—the committee apprehended that they might have mistaken the purport of this report. To ascertain whether this had been done, it has been carefully re-examined.

This second examination not only sustained the first impression as to the meaning of the report, but also that, if the report was right, such a "circular boundary" was not uncommon "in ancient charters of the Crown;" that, in this case, it was "precisely that described in this charter;" and that it was the only boundary which could give "force and meaning to every word of the grant," and answer every

object which could have been in contemplation of "either the Crown or the grantees."

On examination, we discovered that all these declarations, so positively announced, had no other foundation than the ignorant or wilful perversion of the meaning of a plain and well understood English word.

It is obvious that the author of this report has confounded the meanings of the word *circuit* and *circle;* and as the former of these words is used in this charter, he is so led to his conclusion that the boundary it denotes must be circular!!! *Tantœne animis cœlestibus iræe?*

That there may be no doubt of this, read his own words: "It is an established rule of construction, that every word should be allowed a meaning, and to have been used for some assignable purpose. The Virginia construction seems to be in opposition to the word *circuit* used in the description, which appears to have no application to a territory extending between direct and straight lines, from the Atlantic to the Pacific ocean. For the description of such a territory, the word *space* would have been proper and sufficient; but the words *space* and *circuit,* in connexion, seem wholly inappropriate. To give force and effect to the word *circuit,* some other construction must be sought." This other construction he afterwards gives thus: "If Cape Comfort be taken as the centre of the arc of a circle to be extended from, &c., it will be found that the general direction of the line of the circle as, &c., the territory thus included will be precisely that described in the charter, viz: all that space and *circuit* of land lying, &c.," and he afterwards cites "the northern boundary of Delaware, as arising out of the description in *an ancient charter of the Crown,*" (*!!!*) and as an example to show "that a circular boundary (for Virginia) is not an improbable one." Therefore there can be no doubt that it was the misapprehension of the true meaning of this word "circuit," which induced this author to commit so many mistakes as he has here exposed.

It is not very probable that any English scholar would have committed such a blunder; or that any English lawyer could have fallen into such a mistake; or that any geometrician, with this charter before his eyes, could have been betrayed into errors so flagrant.

The signification of the word *circuit,* is any space or extent that may be measured by travelling about it, whether the space be circular, elliptical, triangular, square, or polyhedral. In this sense it is

always used by the English lawyers when they speak of the circuits of their judges; and in the same sense it is used in common parlance every day, as the author of this report may readily discover, if he will but propose to any of his fellow-citizens to take a walk, and in it to make a *circuit* of any *square* in the city of Washington.

Before, at, and long after, the date of this charter, the word "circuit" was often used in English grants of land; and when so used, it was employed in the sense we have given above. In this sense it is very nearly, if not precisely, equivalent to the word "*precinct*," that will be found connected with it, generally, in all such instruments. In illustration of this, several grants of land in Virginia, bearing date between the years 1623 and 1640, may be cited. In each of them, after describing the boundaries of the land designed to be given, the patent conveys all the land "within the space and circuit aforesaid;" and in granting the franchises and privileges appurtenant to the land, such as the rights of fishing, hunting, hawking, fowling, &c., &c., the patent uses the terms "within the precinct aforesaid." Yet the land conveyed by each of these grants is a true rectangular parallelogram, having the length of a statute mile, and a base or breadth of fifty poles.

Had the learned author of this report been better acquainted with the English language, as it was used and understood, both in England and Virginia, from the reign of Queen Elizabeth to the restoration of Charles the Second, it is probable that he would not have committed such a mistake as has been stated. If he had remembered the numerous synonymes always used in every English grant, whether it be the old charter of feoffment, the more modern deed of bargain and sale, or even this charter—in which may be found the words "lands, countries, territories, soils, grounds," &c., &c., all used to signify the same thing—he would not, it is supposed, have required that a different meaning should be given to each of these, nor have desired that a specific reason should be assigned for employing such mere formal tautologous terms in an old English grant. And if he had read the early history of Delaware with more care, he would not, assuredly, have cited the case of her northern boundary, the result of a compromise, made in 1680, between the several claimants of that small space, either as a case "arising out of a description in an ancient charter of the Crown," or as furnishing any evidence to prove even the probability that King James the First designed to give a complete circular boundary to Virginia, by his charter of 1609. But,

having misunderstood the meaning of the word "circuit," and confounded it with that of "circle," he was so induced to adopt the fanciful notion of a circular boundary for Virginia; and then he was obliged to find, or to invent, some reason to prove at least the plausibility of such a theory. In doing this, he was compelled to disregard totally many of the most significant calls of the charter, and to plunge into many absurdities, as will be shown.

One of the most important requirements of this charter, as in all the other grants to which we have formerly referred, is, that the territory granted should extend "from sea to sea;" the meaning of which terms has been already shown. But the South sea would not be reached anywhere between the parallels mentioned, by any arc of a circle drawn with a radius of 200 miles, and having Cape Comfort as a centre.

To avoid this insurmountable objection, the author says, "that it was the belief at that time, in England, that the South sea was but some short distance from the Atlantic." This is true; but it is equally true that, at the date of this charter, it was *known* in England that this short distance exceeded 200 miles, as certainly as that London was not within 200 miles of the Mediterranean. In 1586, Sir Ralph Lane had ascended the Moratoc, now called the Roanoke, to a greater distance than 200 miles from the Atlantic. Captain Newport had afterwards ascended James river above its falls; and, in 1608, Captain John Smith had ascended the Rappahannock, Potomac, and Susquehannah, to the rapids of these rivers, respectively. None of these explorers had either seen or heard of the South sea, in either of these regions; although to discover it was the chief object of these several expeditions. Nay, the volume of fresh water pouring over these rapids, and the velocity of its current, assured these adventurers of the truth of the traditions they heard—that each of these great rivers descended from a distant elevated region; and that such streams could not have communicated with the salt sea anywhere. So that, whatever may have been the belief as to the distance between the two seas, it was certainly *known*, in 1609, that this distance must exceed 200 miles.

But if the learned author of this report was permitted to assume the distance from sea to sea to be what he pleases, he would still not be able to reconcile his fanciful circular boundary with the calls of this charter. If the assumed distance was more than two hundred miles, his boundary would never reach the South sea, although the

charter requires the granted territory to extend to that sea. If this distance was less than two hundred miles, his fancied boundary would resemble anything else more than any arc of any circle, inasmuch as it would then become a quadrilateral figure, having the two seas on the east and west, and two segments on the north and south, respectively. And if this distance was two hundred miles exactly, his imagined arc would touch the coast of the South sea in a single mathematical point only, when he would find it impossible to give effect to that grant in the charter which conveys to the grantees "all the islands lying within one hundred miles along the coast of *both* seas of the precinct aforesaid," unless he can conceive that a point and precinct are equivalent terms; so that, *quacumque via data*, no arc of any circle could satisfy the calls of this charter, given in its description of the intended boundary.

The learned author of this report seems to be as indifferent to the impossibility of the truth of some of his geographical assertions, and to the mathematical absurdities they would involve, if they were true, as to the calls of the charter. Thus, he says, "the cape (Cape Comfort) was accordingly made the centre of the coast line, which the new charter extended from one hundred to four hundred miles in length." Now, admitting the terms "the centre of the coast line" to have some signification, (although a mathematician would be puzzled to determine what point could be properly called the centre of a straight line,) no one can conceive that such a point, even if it can be imagined to exist, could be found *out of the line* of which it is called the centre. And as Cape Comfort is not upon the seacoast, but is distant from it many miles, it is inconceivable that Cape Comfort could be made "the centre of the coast line," unless this author could transport Cape Comfort from the site it has occupied ever since Noah's flood, quite across Chesapeake bay and the peninsula beyond it, now called Northampton county.

Again, he says: "The starting point in the description now under consideration is Cape Comfort. From this the territory is to extend along the coast two hundred miles to the northward, and two hundred miles to the southward;" and to get this "coast-line," as this author calls it, he takes "Cape Comfort as the centre of the arc of a circle, to be extended from the extremity of one of the before-mentioned lines (of two hundred miles) through the interior to the other, and to the course of the coast." But if Cape Comfort be not on the coast, (and it is not, certainly, nor has it ever been supposed to be,) the arc

of the circle required to be thus described *must* be an arc greater than a semicircle; and the coast line, which must be the cord of this arc, will not be a diameter. Every school boy can demonstrate, however, that the longest straight line that can be drawn within the periphery of any circle is a diameter: *ergo*, as the diameter of this supposed arc is demanded to be four hundred miles in length, its chord *must be less* than four hundred miles; so that the author demonstrates, himself, the impossibility of the truth of his own postulate.

The committee deem it unnecessary to review that portion of this report in which the author shows so clearly, as he says, that the true bearing of a precinct bounded by the arc of a circle, which arc is greater than a semi-circle, and has a diameter running north and south, must be "west and northwest." *Davus sum, non Œdipus.* But every man of mere common sense must see, at a glance, that such a precinct will have all the bearings to be found on more than half the compass—that is to say, instead of being directed to two points only, it will be directed to more than sixteen points of the compass.

This newly invented theory of a circular boundary for Virginia has been thus extensively reviewed, because almost every argument urged upon this subject will apply with equal force to the next proposition brought forward in this report, and therefore need not be repeated.

Third.—Under this head, the author, abandoning his circular boundary for Virginia, although but just asserted so positively, contends that the true boundary given to her by her charter of 1609 is in the form of a triangle. Like old Polonius, he has seen it "backed like a weasel," yet "it is very like a whale."

If this triangle did not reach the South sea, it would not satisfy that call of the charter which requires the granted territory to extend "from sea to sea." If it extended further from the coast of the South sea, the boundary of the territory granted would not be triangular, but quadrilateral. If its apex reached the South sea exactly, the grant of the islands in both seas, hereinbefore referred to, could not be satisfied; and any mathematician would tell this author that, as the long side, or hypothenuse, of his triangle is required by him to run to the northwest from the southeast, the bearing of the country, or ocean, beyond this precinct must be neither west nor northwest, but due *southwest* from the space and circuit enclosed by the three sides of this triangle; that is to say, his triangular diagram is constructed as directly in opposition to the requirement of this charter as it could well be made.

The obvious cause of this new error is the mistake of the author in supposing that the terms "west and northwest" are used in the charter to denote the direction of two mathematical lines, which are so to run in order to form two limits of the granted territory—the remaining limit of which territory will be the Atlantic seacoast. But, if he will read the charter with more attention, he may discover that it does not require any such lines; that, instead of lines, it is the whole "space and circuit" of land previously described in the charter, which it directs to be extended from the seacoast of the Atlantic, "up into the land, *throughout* from sea to sea;" and that the terms "west and northwest" refer to the bearing of the seacoast of one of these seas from the other. To satisfy this requirement, two lines, each of them extending 200 miles from the point of Cape Comfort, and running north and south, must be drawn. Through the opposite extremities of these two meridional lines, two parallels must be drawn and extended to the Atlantic seacoast. The precinct so formed must then be extended with that breadth further up into the land, throughout the whole continent, from the Atlantic to the Pacific ocean; which last was then well known to exist, and to bear west and (of course) northwest from the first, between these two parallels, although the distance between the two seas in this quarter was not then known. These boundaries will make an irregular parallelogram, such as has been described. They will satisfy every call, and answer all and each of the known objects of this charter; they are in exact accordance with the opinions expressed by every writer upon this subject, whether English or American, until this singular report was given to the world; they are in perfect harmony with every act done in relation to this territory, during a period of much more than 150 years following the date of this charter; and they well illustrate the known policy of the English Government in reference to this matter. To this, it may be added that there is no other conceivable boundary which can possibly produce such results.

It has been shown that, according to the requirements of her second charter, granted May 23, 1609, Virginia was bounded on the north by the parallel of 40° north latitude; on the south by the parallel of 34° north latitude; on the east by the Atlantic ocean, between these parallels; and on the west by the South sea, (now sometimes called the Pacific ocean,) between the same parallels.

This assertion, although in exact accordance with the opinion expressed by every author who has written upon the subject, has been

questioned for the first time, in a report made to the House of Representatives, by one of its committees, on the 20th of August, 1842. It is proper, therefore, to examine the several arguments advanced, and suggestions put forth in this report, in relation to this matter.

No one can read this report without being struck with the glaring inconsistencies it exhibits. The object of its author is to show that the claim of Virginia to the limits above mentioned is not justified by the terms of the charter there stated. To attain this object, he contends—

First. That the description of boundaries given in this charter is so indefinite and unintelligible, as to leave it quite uncertain what these boundaries were intended to be, and whether they included any space.

Secondly. That the boundary assigned to Virginia by this charter is, by that instrument, well defined to be the arc of a circle, the centre, radius, and chord of which are plainly prescribed; and

Thirdly. That the boundary of Virginia, called for by this charter is, not curvilinear, but rectilinear, and is a veritable rectangular triangle.

The two last of these propositions are, obviously, not less contradictory of the first than they are of each other; yet both of them are said to be in accordance with the calls of the same grant. Such apparent inconsistencies would seem to prove that their author had very little confidence in the correctness of any of his propositions, the truth of each of which he so readily disproves by either or both of the others. In examining them, however, we will deal with him more fairly than he has done with his subject. We will not attempt to overturn one asserted error by another; but we will investigate each of these propositions as though it stood alone.

First. The author of this report commences his argument by quoting so much of the charter of 1609 as he thought useful; and having done so, he very gravely assumes that "it must be admitted that this description (of the boundary) is not very definite or very clearly intelligible." But, aware that such a modest *petitio principii* might not be granted, he immediately undertakes to prove it. This he does by selecting particular phrases from his quotation, as evidences of a "description not very definite," or "very clearly intelligible."

The first of these selected passages, he finds in the phrase "from sea to sea." These words, he observes, "have been holden by Virginia to extend the territory from the Atlantic to the Pacific ocean,

at that time called the South sea. But the South sea [and he might have added the Atlantic] is not named; and the inference that it [or either] was intended, if arrived at, can only be done from other words in the description." He remembers, however, to forget to state what these other words in the description are; and he has most studiously avoided to insert some of them in his quotation. Such disingenuousness may, perhaps, be pardoned in a lawyer, whose object is not truth, but victory. It does not well become a member of Congress, however, who is charged with the high duty of reporting to that body *all* the facts of a case, to the end that this body and the world may be enabled to form an impartial opinion of the merits. Under such circumstances, the *suppressio veri* is precisely equivalent to the *suggestio falsi*.

It would be very easy to prove the ambiguity, nay, the falsehood, of any instrument, however plain, precise, and true its language may be, if it was permitted to garble the language, by wresting a single phrase from its context, and to present this alone as the assertion of an independent and substantive proposition. No inquirer after truth has ever permitted himself to do so. In this instance, every one of the terms "from sea to sea" are quite intelligible to every understanding, and the supposed abiguity consists only in determining the objects to which these plain words refer.

To determine this, no candid inquirer would have failed to remark that "to grant a further enlargement" of a known territory previously granted, was one of the declared objects of the charter of 1609. That this previously granted territory was declared to be "in that part of America called Virginia," a region long known to be situated on the seacoast of the Atlantic ocean, confined by the former grant to a space on the "seacoast," between the 34th and 41st degrees of northerly latitude from "the equinoctial line;" and that "Cape, or Point Comfort," mentioned in the enlarged grant, was a well-known spot in Virginia, situated within the territory formerly granted, near to, and in full view of the Atlantic ocean. If these facts had been stated, as they ought to have been, he must have been skeptical indeed who could have doubted that the Atlantic ocean was *one* of the two seas referred to by the terms "from sea to sea;" and *one* of the two seas referred to in that part of the charter which grants "all the islands lying within one hundred miles along the coast of *both* seas of the precinct aforesaid." This being granted, even the geographical knowledge of this author, great as it may be,

would have been severely taxed to point out any other than the South sea, or Pacific ocean, which can be found, or was ever imagined to exist, between the parallels of 34° and 40° of north latitude, if you proceed "from the (Atlantic) seacoast of the precinct aforesaid, *up into the land*, throughout from sea to sea," no matter what course you may pursue.

But an impartial inquirer after truth would not have stopped even here. He would have remarked, also, that one of the great objects of the London Company, from its very origin, was the discovery of the South sea, as the certain and infallible way to immense riches; that by the instructions given by this company to their agents in Virginia, these agents were specially required and advised how they should proceed in prosecuting this discovery; and that it was the general belief in England, at that day, that the South sea, or Pacific ocean, was but a short distance from the Atlantic, opposite to the seacoast of the latter, within the precinct assigned to Virginia. Combining all these circumstances, it is confidently believed that not one intelligent mind can be found in the whole world, except the minds of those who prepared or approved this report, which can doubt that these intelligible words, "from sea to sea," refer to, and were intended to denote, the Atlantic and Pacific oceans; and that they cannot be so tortured as to be made to apply to any other than these two seas, if any regard is had to their context and the date at which they were used.

But if any *scintilla* of doubt in regard to this matter can remain, it must be removed by a reference to the early grants of other British colonies in Amerira, a part of some of which were actually carved out of Virginia.

I. The second, or northern colony of Virginia, having done nothing effectual towards establishing any permanent settlement in America, under the original charter of 1606, King James I, on the 3d day of November, 1620, made a new grant to the Duke of Lenox, and others, his associates, who were styled in the letters patent the "grand council of Plymouth for planting and governing New England in America." By this grant, the King granted to them the territory "between the fortieth and forty-eighth degrees of north latitude, extending throughout the main land, *from sea to sea.*" (See Chalmers's Annals, p. 97, &c.)

II. The grand council of Plymouth, created by this charter on the 19th of March, 1627, made a grant to Sir Henry Roswell, and others, "of all that part of New England which lies between three miles

north of the Merrimack river, and three miles to the south of Charles rives, extending *from the Atlantic to the South sea.*" (See Neale's History of New England, vol. 1, p. 122.) This grant of the grand council of Plymouth was confirmed by King Charles I, on the 4th of March, 1628, who, by his charter of that date, incorporated the grantees by the name of "the Governor and Company of Massachusetts Bay, in New England." (See Hutchinson's Collection of Original Papers, p. 120.)

III. In 1630, the grand council of Plymouth granted Connecticut to the Earl of Warwick, who transferred his grant to Lord Say and Seal, and others. This grant conveyed "all that part of New England which extends from Narragansett river, one hundred and twenty miles on a straight line, near the shore, towards the southwest, as the coast lies towards Virginia, and within that breadth, *from the Atlantic ocean to the South sea.*" This grant, too, was afterwards confirmed by King Charles I. (See Hutchinson, p. 44, &c.; and Neale, vol. 1, p. 147.)

IV. In the fifth year of the reign of James I, that monarch granted to Sir Robert Heath, his Attorney General, "all that part of America from the river St. Matthew, in thirty degrees of north latitude, to the river Passo Mago, in thirty-six degrees, and extending in longitude *from the Atlantic to the South sea.*" (See Williamson's History of North Carolina, vol. 1, p. 84.) This grant was made in 1608, before the second charter granted to the London Company, in 1609. But the conditions of the grant to Heath not being fulfilled, King Charles II, on the 24th of March, 1662-3, made a new grant to the Earl of Clarendon and others, "of all that province, territory, or tract of ground, called Carolina, situate, lying, and being within our dominions of America, extending from the north end of the island called Luke island, which lieth in the southern Virginia seas, and within thirty-six degrees of north latitude; and to the west as far as the *South seas;* and so respectively as far as the river of Matthias, which bordereth upon the coast of Florida, and within thirty-one degrees of northern latitude; and so west, in a direct line, as far as the *South seas aforesaid.*"

For reasons which need not be stated here, it pleased this monarch afterwards to enlarge this grant. By a new charter, bearing date June 30, 1665, he granted to the same proprietaries "all that province, territory, or tract of land, situate, lying, and being within our dominions of America aforesaid, extending north and eastward as far as the

north end of Currituck river, or inlet, upon a straight westerly line, to Wyonock creek, which lies within or about the degree of thirty-six and thirty minutes northern latitude; and so west, in a direct line, as far as the *South seas;* and south and westward as far as the degree of twenty-nine, inclusive, of northern latitude; and so west, in a direct line, as far as the *South seas.*" (See Williamson's History, vol. 1, p. 230, &c.)

This grant, like that preceding it, cut off from Virginia all that portion of her former territory which was situated north of the parallel of thirty-four; and by the last grant above mentioned, the common boundaay between the two colonies of Virginia and Carolina was declared to be the parallel of 36° 30′ north latitude, extending from the Atlantic ocean, here called "the southern Virginia seas," in a direct line, as far as the South seas. Here it may properly be remarked that this common boundary, so established at that time, has continued to be the common boundary dividing the territories of these two colonies from that day (June 30, 1665,) to this.

About the commencement of the last century, when the settlement of each of these colonies, along their common boundary, had come into contact with each other, a difference arose between them. This difference involved no question as to what this common boundary was; but simply where the admitted boundary-line would pass, if extended west from the Atlantic ocean, in a direct line to the South seas, according to the calls of the Carolina grant. To determine this difference, Queen Anne, on the 1st of March, 1710, by an order in council of that date, directed that commissioners should be appointed by the Governor of Virginia, and by the lords proprietors of Carolina, respectively, for the purpose of running the dividing-line between the two provinces. Before any such commissioners were appointed by either of these parties, Governor Spotswood, on the part of Virginia, and Governor Edin, on the part of the lords proprietors of Carolina, agreed upon the terms according to which the existing controversy might be settled, if these terms were approved by the Crown of England and the lords proprietors aforesaid. The terms proposed by the two Governors were submitted as suggested, and were approved by an order in council, made by King George I, on the 28th of May, 1727. In consequence of this, commissioners were appointed by the lords proprietors and by the King, (George II,) on the 14th of December, 1727, to run the dividing-line according to the terms approved by both parties. These commissioners performed the duty assigned them

to the perfect satisfaction of their several constituents. During the year 1728 the dividing-line was run, according to the calls of the Carolina grant, from the seacoast to a point in the present county of Patrick, within sight of the Allegany mountains, a distance of two hundred and forty-one miles and two hundred and thirty poles—much more than a hundred miles beyond any settlement then made in either Carolina or Virginia. Here they were compelled to stop, by reason of the approach of winter and the failure of their provisions. (See the journal of Col. William Byrd, of Westover, one of these commissioners.)

To these examples more could be added, derived from the early grants of other British colonies in America; but those referred to above must suffice, as we think, to establish these propositions: that so early as the reign of King James I., the crown of England claimed, by right of first discovery and occupancy, all that part of the continent of North America situated between the 29th and 48th degrees of north latitude, stretching throughout this continent from sea to sea—*i. e.* from the Atlantic to the Pacific ocean, then known as the South sea. That all this region was divided, at first, into three colonies—the first, or most southern of these colonies, was extended along the seacoast of the Atlantic, between the degrees of 29 and 36 of north latitude; the middle colony was extended along the same seacoast, between the degrees of 36 and 40 of north latitude; the last, or most northward colony, was extended along the same seacoast, between the degrees of 40 and 48 of north latitude; and each and all of these three colonies stretched throughout the continent, between the named parallels, respectively, from sea to sea—*i. e.* from the Atlantic to the Pacific ocean, in order to cover the whole space claimed by the Crown.

That such was the opinion in regard to the middle colony, called Virginia, the first in which any permanent settlement was made by the English, appears from what is stated in the earliest history of Virginia that exists; for Smith's work, although so called, scarcely merits this title. The first chapter of the second book of Beverley's history is dedicated to a description "of the bounds and coast of Virginia," as they were understood and believed to be when he wrote—that is to say, about the year 1722, after the territory of this colony had been abridged by the proprietary grants of Maryland and Carolina. "Virginia thus considered," says Beverley, "is bounded on the south by North Carolina; on the north by Patowmeck river, which

divides it from Maryland; on the east by the main ocean, called the Virginia seas; and on the west and northwest by the Californian sea, whenever the settlements shall be extended so far, or now by the river Mississippi."—(See Beverley's History of Virginia, p. 102.)

Whether Robert Beverley, long the Secretary of State of Virginia, an officer appointed by the Crown of England, writing his history in 1722, in London, where he had the freest access to the public archives there, or the learned author of this report, written in 1842, merits the most confidence when they describe the ancient bounds of Virginia, is a question we willingly submit to the candid determination of an impartial world. *Non nostrum tantas componere lites.*

After what has been urged, it is not deemed necessary to spend much time in examining the next passage selected by the author of this report, to prove that the description of the boundaries of Virginia, given in her charter of 1609, "is not very definite or very clearly intelligible." This passage he finds in the words "west and northwest."

Every lawyer knows that, when any grant calls for a natural object, to that object you must go, in running out the lines of the grant, notwithstanding it may not be found either in the direction or at the distance mentioned; and that no grant has ever been considered as either indefiniter or unintelligible, because of the incongruity between the bearing given in the grant, and the true bearing of the natural object. Now, as the South sea is a well known natural object, called for by this charter, it is of very little consequence whether this natural object is found north or south, east or west, from the point of departure. Besides, the author of this report is certainly in error when he understands the terms "west and northwest" as being used, in this charter, to denote the direction of a *line* to be extended between two points—one on the seacoast of the Atlantic, and the other to be found somewhere in that direction, on the seacoast of the South sea. If this charter is examined as it ought to be, it will be seen that it is not a mere *line*, but "all that space and circuit of land lying from the seacoast of the precinct aforesaid," which is required to run "up into the land, throughout from sea to sea, west and northwest."

The geometrical truth and certainty of these words "west and northwest" could be demonstrated, when applied (as they are applied in this charter) to denote the relative bearing of two such long lines of seacoast on the Atlantic and Pacific oceans. But it is deemed sufficient to state upon this subject, that this apparent inconsistency

results from that projection of the sphere, according to which all degrees of longitude must diminish, in their terrestrial length, as you proceed from the equator to either of the poles. The effect of this is, as every navigator knows well, that every meridian in the northern hemisphere, distant from any other given meridian in the same hemisphere, either towards the east or west, must necessarily bear from the given meridian, both east and northeast, west and northwest, as the case may be. That this was really the construction of her charter for which Virginia contended, is not matter of conjecture or of tradition. In the negotiation between Virginia and Pennsylvania for the adjustment of the boundary lines between the two States, which took place in 1779, the commissioners on the part of Pennsylvania suggested that the claim of Pennsylvania, which they insisted on, appeared to them the more reasonable, "as it was probable that it would not interfere with the boundaries of Virginia, as described in her charter of the 23d of May, 1609, when they should be determined according to the tenor of the same." To which the commissioners of Virginia answered: "What you suggest to strengthen the reasonableness of the claim of Pennsylvania, from the probability that it will not interfere with the boundaries of Virginia, as described in its charter of May 23, 1609, appears to us to have no weight. The northern boundary of Virginia, as described in that charter, beginning on the seacoast 200 miles northwest from Cape or Point Comfort, and running west and northwest, up into the land, throughout from sea to sea. *Such a northern boundary*, which is truly deduced from the quoted charter, will cross the Delaware above Newcastle, and, passing through the State of Pennsylvania with a *west-northwest* course, will emerge about the beginning of the 42d degree of north latitude; from all which, it is evident how much the claim of Pennsylvania interferes with the boundaries as described in the charter of the 23d of May, 1609." This quotation is made to show that the northern boundary-line which Virginia claimed under her charter was a *west-northwest* line, from the northern extremity of her seacoast line; and it is remarkable that the commissioners of Pennsylvania never afterwards touched that topic. (See Hening's Statutes at Large, vol. 10, pages 519, 523, 527, and 537.)

Having thus made good our original proposition, and relieved it from every objection urged against it by this author, the committee decline urging anything further concerning the ancient boundaries of Virginia given by the charter of May 23, 1609. The propriety of

this course will not be questioned, since the report under consideration itself announces to the world that "the committee do not deem the question of the construction of the charter in regard to *boundaries* of any great importance, because they think the State of Virginia has no right to claim under it." What justification that committee may have to offer to their constituents and to the world, for wasting so much of the public time in the examination and discussion of a question which the committee itself declares not to be of any great importance, it is not for us to determine, differing with that committee in the opinion so expressed; yet it would ill become us to follow the example set, and to extend our investigation *further* than they have done, or to treat gravely any question after they have abandoned it by announcing it to be of no consequence.

The reason assigned by the committee for not deeming the question of the construction of the charter in regard to boundaries of any importance, is, "because they think the State of Virginia has no right to *claim* under it." In support of this opinion, the committee urge many arguments, each of which we will now examine:

The first of these arguments rests upon the assertion of a fact, (which fact no one ever has or can deny,) that all the charters granted to the London Company (of which there were three) were cancelled by a judgment of the Court of King's Bench, pronounced in a case of *quo warranto* depending in that court at its Trinity term, in the year 1624. From this admitted fact, the committee deduce their conclusion that the State of Virginia has no right to claim under such revoked charters.

Throughout this whole report, in reasoning upon the several subjects he presents, its author employs terms so general and comprehensive, that it is difficult to determine the precise object to which he intends to refer. The present is an apt example to illustrate this. What does this mean by "the State of Virginia?" If he means (what his words seem to denote) that self-created body politic and corporate which, in 1776, proclaimed itself a free, sovereign, and independent State, and then chose to take upon itself the name of "the Commonwealth of Virginia," he asserts but a necessary truism, requiring no argument to prove it. Such a sovereign body, self-created and self-sustained, could never stoop to claim anything *under* the mere concessions or grants of any human being. The foundation of her claims must not be sought for in parchment rolls of any kind. It exists and can be found nowhere but in the stout hearts and strong

arms of her subjects, whose eyes ever beam with delight when they willingly and sincerely call upon their creator to witness their vow that they will be faithful and true to her. Strip her of this allegiance, by any means, and she becomes extinct—at once incapable alike of claiming or of holding anything. Virginia, as a region, must have a local designation and a name, both of which, of necessity, must have been bestowed upon it by others; but, as a free and sovereign State, she exists only in the hearts of her own subjects. They created her, they have maintained her, and, with the blessing of God, they alone can preserve her.

Even if the charter incorporating the London Company had never been annulled by the judgment of any court, it would be very absurd to suppose that Virginia, as a State, could claim anything *under* it. The very assertion of her sovereignty, when proclaimed by herself, would have revoked this charter. In virtue of that eminent domain which every sovereign must possess, all the lands within every country must be held by, of, or *under* its sovereign; and it would be ridiculous for this sovereign to claim anything *under* a subject, who at that instant must have claimed the same thing *under* him. It is in virtue of this sovereign right that all escheats and forfeitures are claimed; and it is in virtue of the same right that the payment of all taxes, and the performance of every other servitude necessary to the preservation of the sovereignty—such as militia service, &c., &c.,—may be, and are, lawfully required.

Therefore it is that the "Commonwealth of Virginia" never could have claimed (as it is certain that she never has claimed) any one element of her sovereignty *under* the concession or grant of any human being. She scorns to deduce it from the treaty of 1783, which every American (with the exception of one man) has ever considered, not as a grant, but as a recognition of pre-existing rights; and the era of her independence dates not from 1783, but from 1776; as the years of the colony did not begin with the 13th of May, the date of the first settlement, but with the 26th of October, 1607, when the discovery of Virginia was made.

But the author of this report may not mean "the State of Virginia;" by these words, he may intend, perhaps, to designate the people of Virginia, such as they were before they proclaimed themselves a sovereign State. If this be his meaning, he still errs in asserting that these colonists had no right to claim anything under the charters, after the revocation of these charters in 1624.

He who asserts such an opinion can know but little of the English constitution, as it was understood to be in 1624, or of what must have been the condition of all English colonists, under that constitution, but for their charters; nor can he understand much better the well-settled doctrines of the common law, if he asserts that the revocation of any charter can disturb the vested rights of third persons, lawfully acquired under such an instrument, while it was acknowledged to be valid and obligatory. Happily, we have so seldom any occasion to refer to such doctrines now, that many sciolists regard them as antiquated and obsolete. Hence, the committee must be excused for employing some time in vindicating our forefathers, and in explaining why they considered a charter as the sure foundation of all their rights, and as the palladium of their liberties; and why, until 1776, they always referred to their charters (although revoked by the grantor) as an ever-enduring guaranty to them and their posterity of their rights to life, liberty, and property; and as sanctifying resistance, whenever it should be necessary to resort to it, to defend these rights against lawless power and unauthorized oppression.

According to the theory of the English constitution, as it was understood in the reign of James the First, the King was a sovereign as absolute as any monarch who ever sat upon a throne, whether in ancient or modern days. Such absolute authority was first acquired by conquest; and, being transmitted through many centuries, it devolved at last upon this King, who uniting in his person every formerly disputed claim to the English crown, his parasites found little difficulty in convincing him that the power was his *jure divino*.

But, absolute and sacred as was the authority of the King, according to the theory of the constitution, the exercise of such authority was checked and restrained by very many circumstances. These, in their origin, had no relation whatever to the actual government; but, co-existing with, and respected by it, during many generations, they had exerted a benignant and insensible influence upon it for so long a time, that, when combined, they served as a strong rampart around the privileges of the subjects, by which they were secured against the prerogatives of the Crown. Thus, the English Government, although in its theory as absolute as any upon earth, in its practice and effects was the freest then known to man.

Nor was this freedom less secure because these efficacious checks and potent restraints upon the practical exercise of absolute power were neither engrossed on parchment nor engraved on brass. They

were deeply written on the hearts of a brave people, endeared to their affections, not less by the fact that they had come down to them from a line so remote that the memory of man ran not to the contrary, than by the benign influence they had ever exerted. Casuistry could never diminish this influence by construction; and it readily accommodated itself to all circumstances, when and as they arose. It walked with the monarch as a loyal and faithful liege, bearing a sharp sword, to be wielded by a strong arm, whenever it was unsheathed in defence of right; but acting as a magician's wand, and paralyzing his every faculty to do wrong.

But all these potent restraints upon the exercise of theoretic absolute power were peculiar to England. All the circumstances by which they were created and preserved were of English origin and of English growth. They existed not in the sister kingdom of Scotland, although then governed by the same King; nor were they known in the neighboring realm of Ireland. English customs were the guaranties of the rights of Englishmen, and the freedom they assured was English liberty. It existed at that day in no other region on earth than England; and would have perished if transplanted elsewhere, unless some means had been devised to preserve the exotic in a new climate and foreign soil.

In the reign of Queen Elizabeth, the scheme of colonizing parts of America was conceived by that sagacious monarch; but she and all her wise counsellors knew well that the execution of such a scheme would prove to be but a vain attempt, unless some plan could be adopted by mean of which the privileges of Englishmen might be continued and secured to them when they removed to a remote and foreign land. Therefore, in the first grant made by Queen Elizabeth to Sir Humphrey Gilbert, bearing date June 11, 1578, she declared to him, "his heirs, and assigns, and to every other person and persons, and to their and every of their heirs, that they, and every of them that should be thereafter inhabiting in the said lands, countries, and territories, should and might have and enjoy all privileges of free denizens, or persons native of England; any law, custom, or usage to the contrary notwithstanding."—(See Stith's History of Virginia, page 5.) The same declaration was repeated, but in stronger terms, by King James the First, in the 15th clause of his first charter, dated April 10, 1606, and renewed in the 22d article of his second charter to the London Company, dated May 23, 1609.—(See Stith, Appendix, pages 6 and 20.) To which the committee may add, that the same coven-

ant, in some form or other, exists in every charter for the purpose of colonization, granted by the Crown of England from that day to this.

Such a solemn covenant, so concluded between a sovereign and his subjects, after being fully executed on their parts, can never be revoked on his. Destroy the evidence of the promise made, if you please, and by any means you please; the destruction of the parchment can never disturb the rights acquired under it. Neither the judgment of a court, or of any other earthly tribunal, can ever nulify that holy covenant, which, being executed by one party, thereby becomes enregistered, as obligatory upon the other, in that sacred record that man never keeps or can falsify. Therefore, the committee can safely appeal to every statesman, moralist, or jurist, on earth, not being members of this committee, to say, whether they were not as free denizens of England, after the cancelling of these charters, as they had been before. And, in the same name, we protest against the new doctrine advanced, for the first time, by the author of this report—that our ancestors were the villein serfs of any despot master, or other than free denizens, natives of England, who, even after the revocation of the charters, might walk through the unexplored forests of Virginia, with the like security their English brethren enjoyed as they strolled over the vale of Runnymede, or through the thronged streets of London. The genius of English liberty, evoked by this ever-enduring covenant, accompanied them whithersoever they might go in Virginia, as a guardian angel, to whose charge was specially committed the preservation of all their English privileges. It is false, then, to say that the colonists of Virginia could claim nothing under the charters, after the revocation of these charters in 1624. They still claimed, and were still entitled to, all the privileges of free denizens of England. This, their claim, they deduced from their charters for a period of more than 150 years after 1624, during all which period their claim was very often recognised, and never doubted by any one.

But the author of this report may say, perhaps, that the subject of his examination was territory; that all his remarks, although expressed in such general terms, should be referred to that subject only; and that all he meant to say was, that neither the colonists nor the State of Virginia could claim any territory under the charters, after the revocation of these charters in 1624.

Even so qualified and explained, the assertion is still incorrect. A very large portion of that space included within the circuit of not less

than twelve of our present counties, is still claimed and held under patents granted by the London Company during the legal existence of that corporation. And any lawyer will tell this author that titles so derived were as valid and sacred after the charters were annulled, as they had been before; and that they continue as valid at this day, as any titles derived under grants of the Crown before the Revolution, although such grants may be under the great seal of England, as the manner is, authenticated *per ipsum regem*.

Sixty years have now elapsed since Virginia ceded the territory northwest of the Ohio to the United States; sixty years since, her original right to the territory was, in effect, admitted by the United States, by the acknowledgment of her right to impose conditions on the grant, and by the acceptance of the grant subject to those conditions. Of those conditions the United States have constantly recognized the obligation, and their duty to fulfil them, as a matter of solemn contract between the State of Virginia and the United States.

The constitution of the United States recognized and ratified this contract, article 6, clause 1. The United States claim and hold under the grant of Virginia. It is yet more the interest of the grantees than of the grantor to make good the title which Virginia ceded. These considerations, alone, should suffice, at this late day, to preclude any branch of the Federal Government from questioning the validity of the original right of Virginia to the territory.

Suppose the original claim of Virginia to the territory had no foundation in truth and justice; suppose the United States had title to it, independently of, and paramount to, the cession of it by Virginia: of what importance is it—what possible good purpose can it now answer—to contest, or to maintain, any such proposition? It is a very unhappy, and, in the effect, (though it may not be in the motive,) a very mischievous disposition, which preserves or revives the memory of every ancient feud, inflames anew every cause of civil dissension which the wisdom of our fathers extinguished, and rakes among the ashes of the dead for every subject of party quarrel, of which, if history has preserved a shadowy sketch of the grounds, time has destroyed every vestage of interest.

The apology for reviving this old controversy touching the original right of Virginia to the territory northwest of the Ohio, is found, it seems, in the vaunt made in the report adopted by the House of Delegates in 1834, of "the magnificent sacrifice" and "the generosity" of Virginia in making the cession of it to the United States—a vaunt,

which good taste should have counselled the omission of; and had Mr. Hall been content with saying, in his report, that it was wholly immaterial to the subject then under consideration, (the propriety, namely, of making additional provision for the satisfaction of claims for military land bounties,) this committee would have agreed with him without the least reserve.

Allusion has been made in the report now under consideration to the probable intention of the English government, a few years before the Revolution, to erect new and separate colonies out of the western territory. But this policy was as likely to be applied to the western part of Georgia, South and North Carolina, Pennsylvania, and New York, as to that of Virginia.

But the design to form a new and separate colony west of the Alleganies, out of the territory of Virginia, as held or claimed under original charters, rested on the right claimed and exercised by the Crown, and to all practical purposes long acquiesced in, to dismember from the colonies, at its discretion, *any part of their acknowledged territory*, as had been done by the charters of Maryland, Pennsylvania, Carolina, New York, Maine, and New Hampshire. It certainly was not founded on any pretence that the new colony proposed to be formed west of the Alleganies would *not* take away part of the territory which Virginia was entitled to under her charter of May, 1609. That territory was already formed into a county called West Augusta, and a considerable population was settled in it, represented in the House of Burgesses, and, in all respects, subject to the jurisdiction of Virginia. The very instruction* to the colonial government not to issue grants for lands on the western waters, was a virtual admission that the country was part of Virginia, of which, but for the prohibition, the colonial government might have continued to make grants. In fact, not a few formal grants (*patents*, as we call them) had been issued before the instruction was given; and much larger grants had been authorized *by order of the council*, according to an ancient and frequent practice of the colonial government. In June, 1749, a tract of 800,000 acres of land in our trans-Allegany country, was granted by order of council to the *Loyal Company*, to which in June, 1753, further time was allowed to complete its surveys. In October, 1751, 100,000 acres were, in like manner, granted to the *Greenbrier Com-*

*This instruction was prior in date to the proclamation of October, 1763, mentioned in Mr. Hall's report, for it was certainly acted on by the colonial Governor and Council in May, 1763.

pany, (part of which lay beyond the Alleganies,) and many surveys were made by both companies, but their progress was arrested by the breaking out of the war of 1756, and the irruption of the Indians, which immediately ensued. After the peace of 1763, these two companies united in a petition to the Governor and Council, praying a renewal of their grants, and further time to complete their surveys. But the Governor and Council resolved that, the King having instructed the colonial government not to make grants of lands on the western waters, they were thereby restrained from granting the prayer of the petitioners. This was in May, 1763; and yet as late as 1769, 200,000 acres of land, all lying on our western waters, were granted to General Washington, and other provincial officers and soldiers in the war of 1756, (known as Braddock's war,) for military land bounties, promised by the proclamation of Governor Dinwiddie of Virginia, in 1754; and of these lands surveys were made, and formal patents issued from the land office of Virginia; and this under a royal proclamation of 1763, relaxing so far the prohibition against the grant of lands lying on the western waters. (See Revised Code of 1819, vol. 2, app. 2, pp. 347, 349.) Let it be remarked that the royal proclamations, the instructions to the Governor and Council, and the exception in favor of the military land bounties, were made, promulgated, and carried into execution, through *the instrumentality of the colonial government of Virginia*. And then, it is presumed, it can hardly be doubted that the Crown acknowledged, as the colony claimed, that the territory of Virginia extended beyond the Allegany mountains; and if Virginia was entitled to it, she could only have been so entitled by virtue of her charter of May, 1609; and she had the same title to all the rest of the territory within the limits described by the charter, to the western lands lying beyond the Ohio, as well as to the western lands on this side of that river. It may be remarked, moreover, that though the royal Governor and Council of Virginia professed respect to the royal instructions on the subject, the *people* paid not the least regard to them. They could not get their *patents*, but they persisted in making their settlements with great activity, and were nowise discouraged by the Colonial Government from doing so; and they always acknowledged the jurisdiction of Virginia, claimed her protection, submitted, and indeed claimed to be governed by her laws, and were represented in her legislature. For the defence and security of these very settlers, Virginia waged a war against the Indians, during Lord Dunmore's administration, some two or three

years before the Revolution, which was terminated by the battle (memorable in our colonial annals) of Point Pleasant.

So far, therefore, from this intention of the Crown to erect separate colonies beyond the Alleganies, proving that territory not to be within the limits of Virginia, it *admits* the fact. But it has never been pretended that any charters were granted creating such colonial governments; therefore, the western limits of Virginia remained, up to the time of the deed of cession, unchanged, and in all respects the same as were indicated by the charter of 1609.

It is stated in the report, that "the committee did not deem the question of the construction of the charter of any great importance, because they thought the State of Virginia had no right to claim under it;" for that, "in the year 1623 a controversy arose between the Crown and the London Company;" that, "in November of that year, a writ of *quo warranto* issued against the patent of the corporation, and at Trinity term of the Court of King's Bench, 1624, judgment was rendered, cancelling the patent, and ordering the charter to be resumed by the Crown;" that, "from that time *Virginia became a royal province, and continued such* until the period of the American Revolution; that, during the long period of 150 years from the dissolution of the charter of the London Company to the commencement of the American Revolution, not an act was done, either by the *Crown or Virginia*, recognizing its existence," (the existence of the charter). "It was known in history, as a thing that had been, and had ceased to be."

It is apprehended, that if the details of that controversy, and the judgment pronounced in it, were examined, it would be found that the judgment only took away the monopoly, and the power of government over the colony, which were vested in the company by the charter, without affecting at all the territorial limits, or other rights of the colony itself; that the only change was from the proprietary government of a trading company, to a royal government, over the same dominion and colony.

It is sufficient to state that it was so understood at the time, and ever afterwards. Chalmers, in his Annals, page 63, observes that "history, both ancient and modern, evinces what unexperienced reason would infer—that no plantation ever took deep root, or advanced to maturity, under the influence of the interested edicts of a *commercial* combination. And the Assembly of Virginia, after it had tasted the results of a simple government, opposed with a firm spirit, during the

subsequent reign, the attempts of those who endeavored to revive the patents and restore the corporation."

That the colonial legislature so understood it, is certain, from the fact that it took part with the Crown against the company; and, in 1642, upon an effort being made to restore the colony to the company, it made an earnest remonstrance and declaration against the measure, every word of which was applied to the *misgovernment* it imputed to the *company*, and the evils that would result to *the colony* if its monopoly and power of government should be restored. (1 Hen. Stat. at Large, pages 230, 236.) That it was so understood by the colonial executive, is proved by the answer of the Governor, Sir Wm. Berkeley, in 1671, to one of a series of statistical inquiries of the commissioner for foreign plantations: "What are the bounds and contents of the land within your government?" Answer. "As to the bounds of our land, it was once great—ten degrees of latitude; but now it has pleased his Majesty to confine us to half a degree;" (which "must allude," says Mr. Hening, "to the eastern boundary on the sea shore;") "knowingly I speak this. Pray God it may be for his Majesty's service, but I must fear the contrary;" (2 Ib., p. 514;) quoted in the report under review, page 54. Sir William Berkeley, without doubt, referred to the straitening of our ancient chartered limits, by the charters of Maryland and Carolina. Chief Justice Marshall, delivering the opinion of the Supreme Court in Johnson vs. McIntosh, says: "This charter (the charter of Virginia of May 1609) was annulled *so far as respected the rights of the company*, by the judgment of the Court of King's Bench on a writ of *quo warranto;* but the whole effect allowed to this judgment was to revest in the Crown the powers of government and the title to the lands within its limits;" (the limits described in the charter.) (8 Wheaton, 578.) Every word of the passage quoted seems to have been carefully weighed, and selected to express the legal consequences of the judgment upon the *quo warranto* against the company.

The charter was *annulled so far as respected the rights of the company*, not in respect to the rights of the colony. The *powers of government*, the same powers which the charter had vested in the company as proprietor, were revested in the Crown; the same title to the lands within its (the charter's) limits, which the charter had vested in the company, was *revested* in the Crown. The charter, so far from being annihilated, was recognized. The vacant lands in the colony were thenceforth crown lands in the King's dominion of Virginia, and

the extent of that dominion was only to be ascertained by the territorial limits described in the charter. Those lands could only be acquired by grants from the Crown, and they could only be granted by the Crown, according to a system of land laws enacted by the colonial legislature, and through the instrumentality of the colonial government. Of those colonial land laws we have a long series.

The argument drawn from the judgment against the London Company in 1624, if of avail to prove that Virginia was not thenceforth entitled to claim under the charter of May 1609, would prove too much. It would prove that she had no charter at all, for she never pretended to have any other: it would prove that Virginia, in her political capacity, had no title to any territory whatever; not only no title to the territory northwest of the Ohio, or west of the Alleganies, but no title to the island of Jamestown, or the city of Williamsburg, or Old Point Comfort.

In the latter end of the reign of Charles II., writs of *quo warranto* were issued against all the New England colonies, especially Massachusetts, which were earnestly prosecuted by James II., who proceeded in like manner against all the colonies, even those which were proprietary in their origin. As to Massachusetts, who was not to be deluded or frightened into a surrender of her charter, the Court of Chancery in 1784, decreed "against the governor and company, that their letters patent and the enrolment thereof should be cancelled." Such being the fate of the strongest, the weaker colonies surrendered their charters. (See Chalmer's Annals, pages 414, 415, and 416; also, Mars. Wash., chap. 6.)

Massachusetts obtained a new charter from William and Mary, but differing as to the constitution of her government widely from the old one; it converted *her*, too, into a "*royal province.*" (Ib. chap. 7.) The others obtained new charters likewise.

The judgment of the Court of King's Bench, pronounced in the case of *quo warranto*, could bind none but the parties in that suit and their privies. The parties were, the King *versus* the Corporation The colonists were neither parties in, nor privies to this suit. And if the object of the prosecution, instead of being confined to what it was—a mere inquiry by what warrant the corporators continued to hold their charters of incorporation—had been to convict them of treason, no English lawyer dares to say that the titles of third persons, lawfully acquired from the traitors, before any act of forfeiture committed by them, could be affected by the conviction of treason.

So far as this assertion refers to the commonwealth of Virginia, the committee have already answered it. This sovereign neither claims, nor ever has claimed, anything whatever *under* these charters. She refers to them, constantly, as she would do to any history, geographical treatise, or authentic map, as the best evidence the nature of the case permits, to prove what are the metes, bounds, and extent of the territory which she does claim. She refers to them, as she does to the grants made to others—of Maryland to Lord Baltimore, of Carolina to Lord Clarendon and others, and of Pennsylvania to William Penn—as proofs of what were and are the limits of that region in America called Virginia. Under none of these grants does she claim anything; yet they, too, furnish strong evidence to prove the nature and extent of that which she does claim. This she claims by virtue of her declaration of sovereignty, made in June, 1776, the truth of which declaration then made was afterwards, in 1783, recognized by the King of Great Britain, the former sovereign of this region.

By this declaration and recognition, the commonwealth of Virginia acquired something, as this report itself concedes; and the only question to be examined, is, what were the limits and extent of that something, which this report itself admits to have been so acquired by her. To satisfy such a question, she refers to the ancient charters, as well to her *quondum* colonists as to others.

When the author of the report announces that from the dissolution of the charter of the London Company in 1624, to the commencement of the Revolution, *not one act* had been done, by either the *Crown or Virginia*, recognising the existence of the charter of May, 1609, it is supposed that he was not aware of the controversy between Virginia and Lord Baltimore in 1634, when Virginia asserted her claim, under her charter, to the territory of Maryland; and the King in council did not directly decide against that claim, but left Virginia to her remedy at law. Here was an act of Virginia, certainly, if there was not also an act of the Crown, recognising the existence of the charter under which Virginia claimed. We admit the force of the precedent, and all the legal consequences that can fairly be deduced from it. In all countries governed by the common law, precedent is of force to make law—constitutional as well as municipal law; in all civilized countries, without exception, prescription seems title. The precedent of the charter of Maryland, in effect, established the right of the Crown to dismember from Virginia any part

of her territory, at its discretion, without her consent; but in no wise affected the right of Virginia to such territory within her ancient limits, as had not been dismembered from her.

In Jefferson's Notes on Virginia, (answer to query XIII,) we find the following account of the *treaty of capitulation*, which provided for the security of the practical and civil rights of the colony, as well as its *territorial* rights, under its charter, and even for the restoration of the territory which had been dismembered from it. "Articles agreed on and concluded at James city, in Virginia, for the surrendering and settling of that plantation, under the obedience and government of the commonwealth of England, by the Commissioner of the Council of State, by authority of the Parliament of England, and by the grand assembly of the Governor, Council, and Burgesses of that country," dated March 12, 1651.

The 4th article is in these words: "That Virginia shall have and enjoy *the ancient bounds and limits granted by the charter of the former kings*, and that we shall seek a new charter *from the Parliament* to that purpose, *against any that have entrenched upon the rights thereof.*" Here was an assertion by Virginia of her territorial rights under the charter of the former kings, including that of May, 1609, in a solemn recognition thereof—not indeed by the Crown, for there was then no king; but by the Parliament of England nominally; in fact, by the protector Cromwell, in whom were centred all the executive and legislative powers of the state, to all practical purposes. It appears, too, that Virginia claimed all the territory which had been granted by her charter, and redress against any that had *entrenched upon the rights thereof*—referring, doubtless, to the territory of Maryland, which had been granted to Lord Baltimore by Charles I, in 1633. It was stipulated that Virginia should seek a *new charter from the Parliament* to that purpose—meaning that she should bind herself formally to hold of the Parliament instead of the Crown; and the purpose of that stipulation was, that she thereby engaged indirectly to renounce her allegiance to the house of Stuart, which she could hardly have been brought to do directly, for the body of the people were cavaliers, and very loyal. No new charter was ever obtained from the Parliament; there was never, from that time, any real Parliament to ask one of, during the continuance of the protectorate. Cromwell was sovereign lord and master.

Mr. Jefferson says: "The colony supposed that, by this solemn convention entered into with arms in their hands, they had secured

the ancient limits of their country; its free trade; its exemption from taxation but by their own assembly, and exclusion of military force from among them; yet, in every of these points was this convention violated by subsequent Kings and Parliaments, and other infractions of their constitution equally dangerous committed." Instead of 400 miles *on the seacoast*, they were reduced, in the space of thirty years, to about 100 miles," by the protection of Lord Baltimore, in the enjoyment of the territory of Maryland, which had been before dismembered from Virginia, and by the subsequent grants of Pennsylvania to Penn, and of Carolina to Lord Clarendon and others.

In this report, Mr. Hall quotes, as if *authoritative* on the subject, the declaration of Maryland in the preamble to her act of accession to the confederation of January, 1781, the representation of New Jersey made in Congress in June, 1778, the report of the committee of Congress made in November, 1781, and a speech of Mr. Wilson, of Pennsylvania. Mr. Wilson, (if the report of his speech is correct) said that, "if the investigation of right was to be considered, the United States ought rather to make cessions to individual States than receive cessions from them—the extent of the territory ceded by the treaty" (of peace) "being larger than all the states put together; that, when the claims of States came to be limited on principles of right, the Allegany mountains would appear to be the true boundary; this could be established without difficulty before any court or tribunal of the world." How Mr. Wilson got the Allegany mountains for the back line of all the States cannot be conjectured, unless he regarded that line as established by the King's proclamation of October, 1763, whereby the governors of the colonies were prohibited for the present, and until the further pleasure of the Crown should be known, from granting warrants of survey, or passing patents, for any lands beyond the sources of the rivers which fell into the Atlantic ocean from the west or northwest, or upon any lands whatever, which, not having been ceded to or purchased by the Crown, were reserved to the Indians; and all the territories lying on the western waters were reserved under the sovereignty, protection, and dominion of the Crown, for the use of the Indians. Now, if Mr. W. thought that a royal prohibition—and that, in terms, a temporary prohibition—to the colonial governments, against granting vacant lands, or Indian lands, lying within the chartered limits of their respective colonies, took such lands out of the limits of the colonies, and ousted their jurisdiction over them, this seems to be a very strange conclusion from the prem-

ises; for we have the authority of the Supreme Court of the United States (in Johnson *vs.* McIntosh) that it was never understood that the existence of the Indian title, unextinguished by purchase or conquest, to any territory within the chartered limits of any of the colonies, made those lands the less a part of the colonies in which they lay. It is surprising that a Pennsylvanian should have admitted that it was competent to the Crown, at its will and pleasure, to take away any part of the lands within the limits of a *proprietary* colony, while the charter of the proprietor remained in force unimpaired; and as to the other colonies, the "royal provinces," the Crown might rightfully have interdicted the grant of any *Crown lands* lying in any part of them; or it might have granted the property and the right of disposing of any tract of *vacant country* within their limits—leaving them yet within the limits, jurisdiction, and government of the colony in which they lay. Thus the Crown *might have* interdicted the sale and grant of the palace grounds within and near the city of Williamsburg; and it *did* grant the whole of the *northern neck* of Virginia to Lord Fairfax, with absolute power to dispose of it; and he, in fact, opened a land office to dispose of it, and did grant it out to individuals upon the terms he thought proper to prescribe; and yet those palace lands would have remained, and the northern neck was always understood to remain, part of Virginia, and subject to his jurisdiction. But the State of Pennsylvania did, it is supposed, entertain a different opinion from that advanced by her delegate in Congress. In examining the correspondence between the commissioners of Pennsylvania (of whom David Rittenhouse was one, whose character is well known) and the commissioners of Virginia, in the treaty for the adjustment of the boundaries between the two States in 1779, it is found that the commissioner of Pennsylvania, notwithstanding the royal proclamation of 1763, claimed, under the charter to Penn, a large tract of country west of the Alleganies, and, moreover admitted most distinctly that Virginia had a right still to claim under her charter of May, 1609; though they suggested that the boundaries described in that charter would not take away any part of the land lying within the charter of Pennsylvania, they admitted that all the lands beyond the Alleganies, south and west of Pennsylvania, belonged to Virginia by force of her charter of May, 1609; and this was the very basis of the negotiation and of the final arrangement between the two States. (See 10 Hen. Stat. at Large, p. 521—536.)

France, in virtue of her discovery of the mouth and course of the

Mississippi, up as far as the 33d degree of north latitude, claimed all that extensive district of country; before that, she claimed all the lands watered by the streams emptying into the lakes. These conflicting claims between the British colonies and France, ultimately were the cause of the war in 1756. France, in pursuance of her claim, had established a chain of posts from Canada to the Ohio, and along that river, and in the country watered by its tributaries; and the Crown of England had granted to the Ohio Company a tract of 600,000 acres of land in the disputed country. Collisions immediately took place between the French and Ohio Company; and these were the immediate cause of the war upon this continent. Mr. Marshall says, in his life of Washington, ch. 11, page 377, that the tract of land granted to the Ohio Company "was actually granted as part of the territory of Virginia; and Dinwiddie, the Lieutenant Governor of Virginia, considering the French aggressions *as an invasion of the colony, the interests of which were committed to him,* laid the subject before the colonial assembly, and despatched General (then Major) Washington with a letter to the commandant of the French forces on the Ohio, requiring him to withdraw from the dominions of the British Crown. It was the colonial government of Virginia which first interposed—it was the colonial government of Virginia that commenced the war, with a corps of provincial troops under Major Washington, which was defeated at the Little Meadows."—(Ib ch. 11, page 367, 379.) The treaty of peace of 1763 extinguished the claim of France to all the territories south of the line of the lakes, and east of the Mississippi; and thus secured to the colony of Virginia the line of the lakes for her *northwestern* boundary, (as she had always claimed,) and restricted her boundary on the *west* to the Mississippi.

Accordingly, Mr. Jefferson, in his Notes on Virginia, traces the boundaries of the State up to the charter of May, 1609, and the successive limitations upon those boundaries, to the charters of Maryland, Carolina, and Pennsylvania; then to the treaty of peace between Great Britain and France of 1763, which limited Virginia to the Mississippi on the west, and to the line of the lakes on the northwest; and, finally, to the cession of the territory northwest of the Ohio, by Virginia, to the United States, which restricted our territory on that side by the Ohio. Can any one suppose that Mr. Jefferson was ignorant of the proceedings and judgment on the *quo warranto* against the London Company in 1624? or that he did not understand

the effect of that proceeding upon the territorial rights of the colony under its charter of May, 1609?

Mr. Hall, in his report, has spared us the trouble of showing Mr. Madison's opinions, viz: that *he* had *no* doubt of the original title of Virginia to the territory in question, at the same time that he thought that good policy dictated to her the propriety of ceding that title to the United States. It may be well to explain, that when Mr. Madison said (in his letter to Mr. Randolph of the 10th of September, 1782, quoted in the report, page 61,) that "if the decision of the State, *on the claims of the companies*, could be saved, he hoped her other conditions would be relaxed," he meant the decision of Virginia *against* the claims of the Vandalia, the Indiana, and some other companies, which Virginia deemed contrary to her law, and declared null and void by her statute of May session, 1779, ch. 12, (2 Rev. Code—app. 2, ch. 4, p. 357;) and when those companies applied to Congress for its sanction of those claims, earnestly protested against the action of Congress on the subject, by her remonstrance of the 14th of December, 1799.—(10 Hen. Stat. at Large, p. 557–8.)

It is worthy of remark, that Mr. Madison was in correspondence with Mr. Edmund Pendleton touching the claim of the United States for a cession of the territory from Virginia. Mr. P. belonged not to the executive or legislative department of Virginia, but to the judiciary; and Mr. M., no doubt, had recourse *to him* for information, as the person most likely to possess and to furnish it; and though Mr. P.'s views and opinions are not given us, we may be sure that Mr. M.'s are an exact exponent of his. To those who know Mr. P.'s character and history, his long and intimate acquaintance with all our colonial affairs, his diligence of research, his opportunity of acquiring full and accurate information, and his capacity, intellectual and moral, to deduce the truth from the information he had acquired, it will, perhaps, not be thought extravagant to say that he, of all men, was the person best informed on this and all like subjects, so far as Virginia was concerned.

Having clearly established that the views presented by Mr. Hall, in the report under review relative to the boundaries of Virginia, were unfounded and altogether erroneous; and moreover having shown that the importance attached to the revocation of the charter by the Crown of England was equally futile,—it is deemed proper, as the report in other respects gravely questions the right of Virginia to her western

territory, to extend our inquiries somewhat farther, so as to embrace most of the prominent points tending to elucidate and establish her right to the territory, which by her deed of cession, she conveyed, under certain conditions, to this Government.

Virginia, in her constitution adopted June 29, 1776, plainly states her boundaries in the following words:

"The territories contained within the charters erecting the colonies of *Maryland, Pennsylvania, and North and South Carolina*, are hereby ceded, released, and forever confirmed, to the people of those colonies, respectively, with all the rights of property, jurisdiction, and government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by *Virginia*, except the free navigation and use of the rivers *Potomac* and Pokomoke, with the property of the Virginia shores or strands bordering on either of the said rivers, and all improvements which have been or shall be made thereon. The western and northern extent of *Virginia* shall, in all other respects, stand as fixed by the charter of King *James I*, in the year 1609; and by the public treaty of peace between the courts of *Great Britain* and *France*, in the year 1763, unless, by act of Legislature, one or more territories shall hereafter be laid off and governments established westward of the Allegany mountains; and no purchase of land shall be made of the Indian natives, but on behalf of the public, by authority of the General Assembly."

This, it will be seen, is in accordance with the limits and boundaries which we have successfully established to have been indicated by the charter of 1609, and recognized and acquiesced in by the country at large; restricted only by those limitations contained in the subsequent charters granted by the Crown to Lord Clarendon, Lord Baltimore, and William Penn. Virginia thus claimed all the territory within her chartered limits, and embraced in the treaty of 1763, between France and Great Britain, except the portions alluded to; which being conveyed by the British Crown to the parties just named, she therefore abandoned her right to all that portion of her domain included in those charters. Her claim to territory in 1776 was coextensive with her original chartered limits, and the terms of the treaty of 1763, with the restrictions just stated; nor did she lay claim to lands within the chartered limits of any of her sister colonies.

In examining the colonial charters, and the different claims set up to the western territory by several of the old States, it is found that Connecticut claimed the territory north of the 41st degree of north

latitude, extending the full breadth of her charter from the Atlantic to the Pacific ocean. But it must be borne in mind that there was a proviso in the charter *precluding* any encroachment on the southern or Virginia colony, or upon lands *then* in the *possession* of any other Christian nation lying *west* of the Plymouth colony. It is believed that Connecticut rested her claim to a large portion of Pennsylvania, partly upon her charter, and, to some extent, on Indian purchases. The citizens of Connecticut insisted that their charter gave them the same breadth of land from the Atlantic to the Western ocean. This Pennsylvania controverted, on the grounds that, at the time the charter was granted to Connecticut, the Dutch *held and possessed* the land along the Hudson river, and that *back* of them the French *claimed*. Besides that, at a later period New York and Connecticut adjusted their boundaries, because of the King's having exercised his prerogative of curtailing the old charters by subsequent grants to other persons.

Chalmers, in his Annals, page 575, states, that "not only had New Netherlands been granted to the Duke of York, but *one-half* of Connecticut; which gave rise to one of those disputes that can only be settled by amicable treaty, because no acknowledged principles existed that were applicable to the pretensions of both. This colony, accordingly, sent commissioners to New York in December, 1664, to decide a dispute which so much involved the peace of both."

The charter of Connecticut was granted in 1661; that of New York, in 1664; that of Pennsylvania, in 1681. In 1684 the commissioners deputed by the King marked the boundaries between New York and Connecticut, which were assented to by all the parties. On account of the adjustment of this western boundary of Connecticut, and because the grant to Penn was subsequent to the Connecticut charter, as well as for other reasons, it was urged that the latter had no valid claim to any portion of the northern part of Pennsylvania.

Massachusetts, also, under her charter, laid claim to an immense territory extending from sea to sea; and from that, as well as on account of purchases, she claimed the land now embraced in New Hampshire and Maine. It is stated in volume 2, page 9, of Williamson's History of Maine, that "the charter of William and Mary, of October 7, 1691, embraced the whole territory of Maine in two great divisions: one, extending from Piscataqua to Kennebeck, was called the *Province of Maine;* the other, including all between Kennebeck and

the St. Croix, was usually denominated Sagadahock." "After the treaty of Ryswick, (11th September, 1697,) France, by treaty, and Massachusetts, by charter, both strenuously claimed the Sagadahock province, or country between Kennebeck and St. Croix." (Ibid. vol. 2, page 26.)

In vol. 8 of Wheaton, at pages 578 and 580, Johnson vs. McIntosh, it is stated that "a patent for Maine was granted to Georges;" and that afterwards Charles the Second was extremely anxious to acquire the property of Maine, but that the grantees sold it to Massachusetts."

Chalmers, in his Annals, page 379, observes, that "while Charles, before the complaints above mentioned were fully adjusted, was in treaty with Georges, in order to acquire his interest, the general court *slily* purchased his title. Mortified and offended beyond measure, that monarch, though willing to forget past errors and mistakes, required it to give up the purchase, and to return the writings upon being reimbursed the price."

But the claim of Massachusetts to territory beyond her present western boundary, it is fair to presume, was arrested by causes similar to those which restricted the State of Connecticut to her present limits.

Smith, in his History of New York, (pages 13 and 14,) observes, that "the King granted a patent, on the 12th of March, 1664, to his brother, the Duke of York and Albany, for *sundry* tracts of land in America; the *boundaries* of which, because they have given rise to important and animated debates, it may not be improper to transcribe, viz: all that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining New Scotland, in America, and from thence extending along the sea-coast unto a certain place called Pemaquie, or Pemequid, and so up the river thereof to the further west head of the same as it tendeth northward, and extending from thence to the river of Kimbequin, and so upwards, by the shortest course, to the river Canada northward; and, also, all that island or islands commonly called by the several name or names of Meitowacks or Long Islands, situate and being towards the west of Cape Cod and the narrow Higansetts, abutting upon the main land between the two rivers, then called or known by the several names of Connecticut and Hudson's rivers; together also with the said river, called Hudson's river, and all the land from the west side of Connecticut river to the east side of Delaware bay; and

also all those several islands called or known by the names of Martin's Vineyard, or Nantucks, otherwise Nantucket, together," &c.

"Charles II granted to the Duke of York, in March, 1664, the region extending *from* the western *banks* of Connecticut to the *eastern shore* of the Delaware, together with Long Island—conferring the powers of government, civil and military; and considering neither the plantations of *Connecticut* nor of Holland to *exist*."—(Chalmers' Annals, page 573.)

"As the *validity* of the grant to the Duke of York, *while* the Dutch *were* in quiet *possession* of the country, had been very *justly* questioned, he thought it prudent to obtain a *new* one in June, 1674; it confirmed the former."—(Ibid, page 579.)

"When the Duke of York ascended the throne of his brother, this province, with its dependencies, devolved on the Crown."—(Ibid, page 588.)

The State of New York, it appears, did not rest her claim to the western territory upon her charter, but mainly upon Indian purchases. The treaty of Stanwix (this was the name of a fort in the province of New York) in 1768, the result of a congress in which the colonies and the Six Nations were represented, perhaps in conjunction with other pretensions of equal importance, constitutes, it is supposed, the strongest claim that State could urge to the western territory embraced within the chartered limits of Virginia. But to place this view of the subject more authoritatively before the country, the committee respectfully invite attention to the following extracts from the 1st vol. Laws of United States and the Congressional Journal:

"The whole territory north of the river Ohio, and west of the State of Pennsylvania, extending northwardly to the northern boundary of the United States, and westwardly to the Mississippi, was claimed by Virginia; and that State was in possession of the French settlements of Vincennes and Illinois, which she had occupied and defended during the revolutionary war. The States of Massachusetts and Connecticut claimed all that part which was within the breadth of their respective charters; and the State of New York had also an indeterminate claim to the country."—(Laws United States, vol. 1, page 452.)

"The report of the committee, consisting of Messrs. Boudinot, Varnum, Jenifer, Smith and Livermore, on the cessions of New York,

Connecticut and Virginia, &c., being the order of the day, &c." (See Congressional Journal of May 1, 1782, pages 21, 22 and 23.)

In that report it is stated, "That the agents for New York and Connecticut laid before the committee their several claims to lands, said to be contained within their several States, together with vouchers, &c.; but that the Virginia delegates declined any elucidation of their claim, &c., but delivered to the committee a written statement." This written statement not being printed in the Journal, was found in the Department of State amongst the old papers there filed for safekeeping, and is as follows:

"No. 20.

"*Protest of the Virginia delegates.*

"That no misconstruction, unfavorable to the territorial rights of the State of Virginia, may be put on the refusal of its delegates to exhibit evidence in support of them before the committee to whom the territorial cessions of Virginia, New York and Connecticut were referred, according to the request of that committee, and the example of the delegates from New York and Connecticut, the considerations on which that refusal was grounded, and of which the committee were verbally apprized before any progress was made in the present inquiry, are now stated to them in writing:

"1st. The acts of Congress, in compliance with which the above mentioned cessions were made, are founded on the supposed inexpediency of discussing the questions of right, and recommend to the several States having territorial claims in the western country a liberal surrender of a portion of those claims for the benefit of the United States, as the most advisable means of removing the embarrassments which such questions created. To make these acts of surrender, then, the basis of a discussion of territorial rights, is a direct contravention of the acts of Congress, and tends to diminish the weight and efficacy of future recommendations from them to their constituents.

"2d. If the present discussion has been opened upon an opinion that Congress can assume for the use of the United States any portion of territory claimed by an individual State, and supposed by them not to fall within its limits, we are now to learn the page of the confederation in which this power is delegated; if upon an opinion that Congress may exercise jurisdiction in territorial controversies

between individual States, we refer the committee to the article of the confederation which vests an exclusive jurisdiction in such cases in another tribunal.

"3d. The cases now before the committee may eventually be brought before that constitutional tribunal. Ought not its decrees to be free from the bias and suspicion to which they may be exposed by the most indirect prejudication on the subject of right by so high an authority as Congress, or even a committee of Congress?

"4th. Although it should be confessed that the cognizance of territorial rights belongs to Congress, or a committee of Congress, (against which position we strenuously protest,) yet the very form of conducting this business, if scanned by the ordinary rules of justice, is manifestly and essentially defective. Without any previous notice to the parties of an intention to discuss questions of right, and receive evidence relating to them,—nay, after expressly holding forth to them an intention to exclude all such questions, they are now called upon to exhibit the evidence which supports their respective claims, by which means prepossessions in favor of one party may be erected by arguments and representations which another party is unprepared to controvert.

"5th. Nor can the conditions or reservations annexed to some of the cessions render a discussion of territorial rights necessary to determine the authority of Congress to accept them. For even if these reservations should interfere with the claims of any other State, what injury can arise? since the doors of the constitutional tribunal will not be barred to them; and it may at the same time be declared by Congress that such acceptance shall in no wise effect them.

"JOS. JONES,
"JAMES MADISON, JR.,
"EDMUND RANDOLPH."

A true copy from the original filed in the Department of State.

W. S. DERRICK.

FEBRUARY 5, 1844.

The foregoing protest presents very conclusive reasons for *then* declining to discuss the right and title of Virginia to her territory. But it is a matter of regret that the able gentlemen who presented this paper did not afterwards place the Virginia title in its true light

before the country, so as to obviate such imputations as the author, in the report now under review, has seen fit for the first time to dignify, by formally urging them in a report addressed to the House of Representatives. From their known ability and intimate acquaintance with the subject, they could most effectually have vindicated the claim of Virginia, and established her right to all the western territory, which she contemplated ceding to the United States. At this late day, the subject is not only deprived of much of its interest, but it has ceased to be a question of practical importance. Notwithstanding this conviction, yet, deeming the assumptions of the report under review no less ill-timed and unfounded than prejudicial to the fame and character of the State of Virginia, it was deemed proper, though at this late day, to repel those extraordinary assumptions, and to place such views before the country in reply, as are sustained by facts and authorities, accompanied with such an exposition of them as our limited time would permit.

The report of the committee of the House of Representatives in 1782, after a brief statement, contains several resolutions, with the reasons for them appended thereto. From the purport of the resolutions, as well as from the character of the particular reasons adduced in their support, it is clear that Massachusetts, New York, Connecticut, &c., did not ground their claims on chartered rights or boundaries; for, if they had depended on them, they would also have been alluded to by the committee, either in their report, resolutions, or reasons. So it is fair to infer that they deemed the territory in question as lying *outside* of their chartered boundaries.

This was not only the fact, but the reasoning of the committee conveyed no other impression. It is well, too, to keep in mind the fact, that the Virginia charter was anterior to either of the northern charters; and that each of the New England charters contained a clause, protecting the soil and limits of the south Virginia colony from aggression by those claiming under them.

In corroboration of what has just been urged, the attention of the House is invited to the two first reasons appended to the report just referred to, which are as follows:

"*First.* It appeared to your committee, from the vouchers laid before them, that all the lands ceded, or pretended to be ceded to the United States by the State of Virginia, are within the *claims* of the States of Massachusetts, Connecticut, and New York, being a part

of the lands belonging to the Six Nations of Indians and their tributaries.

"*Second.* It appeared that a great part of the lands claimed by the State of Virginia, and requested to be guarantied to them by Congress, is also within the *claim* of the State of New York, being also a part of the country of the said Six Nations and their tributaries."

The fair inference to be drawn from the proceedings in Congress—so far, at least, as the printed journals present a history of them—is, that not one of the States objected to the claims of Virginia as encroaching upon *their* chartered rights or boundaries. But if those States relied upon *Indian* purchases, and thought, on that account, they had superior claims over Virginia to the western lands, yet a recurrence to history, it is supposed, will but poorly sustain them on that point. Indeed, from the hasty examination which we have given the question, our investigations induce the belief that, if Virginia rested her claim solely on such a precarious tenure as that, still she would, before an impartial tribunal, establish her right. In support of the conclusions we have arrived at on this point, we respectfully invite the attention of the House of Representatives to the following brief account of the treaties, deeds, sales, &c., between the Six Nations of Indians and Virginia:

In the reign of George the Second, in the year 1744, a treaty was concluded at Lancaster, Penn., between the Six Nations of Indians and Lieutenant Governor Thomas of that province, and the commissioners, from Maryland, and Thomas Lee and William Beverly, commissioners from Virginia.

During the progress of negotiations, on the 28th of June, the Virginia commissioners observed, "that the first treaty between the great King, in behalf of his subjects in Virginia, and you, that we can find, was made at Albany, by Colonel Henry Coursey, seventy years since. This was a treaty of friendship. The next treaty was also at Albany, about fifty-eight years ago, with Lord Howard, Governor of Virginia. Then you declared yourselves *subjects of the great King, our father, and gave up all your lands for his protection.* At a subsequent treaty with Governor Spotswood at Albany, wherein (they said) you have not recited it as it is; for the *white* people, your brethren of *Virginia*, are, in *no* article of that treaty, *prohibited to pass and settle to the westward of the great mountains.* It is the

Indians tributary to Virginia that are restrained, as you and your *tributary Indians*, are from passing to the *eastward* of the same mountains."

On the 2d of July, the commissioners proposed that "we will give you, our brethren of the Six Nations, what goods they had with them, costing £200, Pennsylvania money, and £200 in gold, upon condition that you immediately make a deed, recognising the King's right to all the lands that are, or shall be, by his Majesty's appointment, in the colony of Virginia." This resulted in the Six Nations executing a deed of their lands to the King.

In April, 1752, the Governor of Virginia appointed Joshua Fry, Lunsford Loamax, and James Patton, commissioners, in behalf of the colony, to visit the Ohio, with instructions to obtain a confirmation, from the Indians settled there, of the Lancaster deed. In obedience to these instructions, a treaty was held at Loggstown, on the Ohio, between the commissioners and the Six Nations. The Lancaster deed of 1744 was again, by a deed dated the 13th of June, 1752, fully recognized and sanctioned in the following words, viz: "We, sachems and chiefs of the said Six Nations, now met in council at Loggstown, do hereby signify our consent and confirmation of the said deed, in as full and ample a manner as if the same was here recited."—See Colony Titles, pages from 29 to 68

"Owing to his temper, as well as to his *situation*, Dongan (then Governor of New York) engaged, more than any of his predecessors, in the affairs of the tribes *bordering* on his province, which had so great an influence on its prosperity and peace. When the French settled in Canada, during the year 1603, they found the *Five Nations*, which, under the names of Mohawks, Oneydoes, Onondagas, Cawgugas, and Senekas, had been confederated from the most ancient times, engaged in implacable warfare with the Adirondacks, the most powerful tribe in that country." Subsequently to this war, and about 1680, "the Five Nations, in order to gratify their passion for war, to revenge insults offered during the time of their distress, turned their arms *southward*, and conquered the country *from* the Mississippi to the *borders* of the plantations as far as Carolina, destroying numerous nations, whose names no longer remain. And Virginia and Maryland were involved often in the calamities of their allies, whom they were unable to protect, except by treaties, which were generally infringed because they could not be enforced. In July, 1684, however, Lord Effingham and Dongan concluded a definitive peace with these pow-

erful tribes for all the settlements; which was long inviolably kept, because they soon renewed the war with their ancient enemies the French."—See Chalmers's Annals, pages 585, 587.

"The Six Nations, occupying settlements in the western part of the colony, and having been frequently engaged in wars with the French, were considered as a most important barrier to our frontier American settlements; it was, on that account, deemed expedient to enter into a treaty with them."

"In the year 1684, Lord Howard of Effingham, at that time Governor of Virginia, with two members of his council, visited Albany, to make a treaty with the Six Nations. On the 13th of July, in the presence of the Governor of New York and the magistrates of Albany, he addressed a speech to them, containing proposals for a future alliance and friendship, which were formerly accepted and ratified."

"The Six Nations stipulated to submit their lands to the Crown of England, 'to be *protected* and *defended* by his Majesty, his heirs and successors forever, to and for the use of them (the said Indians) their heirs and successors.'"

The treaty of Utrecht, in 1763, contains the assent of the French nation to the negotiations previously entered into between the Six Nations and the English, in the following words, viz:

"The subjects of France inhabiting Canada, and others, shall hereafter give no hinderance or molestation to the Five Nations or cantons of Indians, *subject to the dominion of Great Britain*, nor to the other natives of America, who are friends to the same."—See Colony Titles, pages 30 to 50.

It has been already stated that the treaty and purchase made by the Governor of New York with the Six Nations were made and entered into at Fort Stanwix, in the year 1768. This, then, was subsequent to the purchases by Virginia, as the foregoing treaties indicate, and after the close of the French war, which extended the limits of Virginia up to the lakes, and west to the Mississippi river. But purchases of land from the Indians, according to an understanding entered into as early as 1665, were precluded, unless by the sanction and consent of the Governor.

In the chapter treating on the united colonies, the author observes that "it instantly became a fundamental principle of colonial jurisprudence, that, in order to form a *valid* title to any portion of the general domain, it was necessary to show a grant either mediately or

directly from English monarchs; and this suggests the principal cause of the general solicitude to procure patents from the sovereigns of England at every period, because in them the *whole* was supposed to be vested."—Chalmers's Annals, p. 677.

"A great dispute between the inhabitants of Jamaica, or Long Island, which was adjusted by Colonel Nicholls, on the 2d of January, 1665, gave rise to a salutary institution, which has, in part, obtained ever since. The controversy respected Indian deeds, and thenceforth it was ordained that *no purchase from the* Indians, *without* the Governor's license, executed in his presence, *should be valid.*"—Smith's History of New York, p. 35.

In addition to all this authority, the Legislature of Virginia in 1662, passed an act which forbade purchases of land from the Indians; and it does not appear that it was ever repealed.—See vol. 2 Hening's Statutes at Large, p. 139.

What has been adduced relative to Indian treaties, sales and deeds, it is believed is sufficient, should the conflicting claims of the several States be placed on this ground, to establish the right of Virginia to the territory which she ceded to this Government. But, as we have it in our power to produce the highest judicial authority known to this country, which places the claims of Virginia beyond cavil or dispute, we will close the discussion on this branch of our inquiries by citing the conclusive adjudications of the federal court upon several of the points previously argued in this report. As those points are treated by the chief justice and one of the associate justices with great clearness and ability, it is deemed proper, on that account, as well as on account of the great magnitude of the questions, to extract copiously from their opinions.

Judge Baldwin, in his Constitutional Views, page 80, remarks that "this guaranty was fulfilled by the treaty of peace, in which 'his Britannic Majesty acknowledges the said United States, to wit: New Hampshire, &c., to be free, sovereign, and independent States.'—1 Laws, 196. This recognition (relating back to the separate, or unanimous declarations by the States, as this court have held it) has the same effect as if the States had then assumed the same position, by the previous authority of the King; the treaty not being a grant, but a recognition, and subsequent ratification of their pre-existing condition; and all acts which had declared and defined it previous to treaty, relating back to 1776."

"The people of North Carolina declared that all the territory within

the bounds of the State was the right and property of the people, to be held by them in *full sovereignty*.—Laws of N. C., 275–6, Book Const. 234–5, December, 1776." (Baldwin's Constitutional Views, page 81.)

"Georgia insisted on that line (the 31st degree of north latitude) as the limit which she was entitled to, and which she had laid *claim* to, when she declared herself independent; or which the United States had asserted *in her behalf*, in the declaration of independence."—(Ibid, page 75.)

It is remarked by Judge Baldwin, page 84, that "all charters and grants of power or property, are governed by the same rules of construction; all questions touching the boundaries of territory, or lines of jurisdiction, must be referred back to the original sovereign, in whom both were vested; and thence deduced, by a regular chain of title, to the contending parties. So this court has done, as to the controversies between the United States and foreign States."—2 Pet. 299, 314.

At page 87 he observes, that "By the Revolution, the duties, as well as the powers of government, *devolved* on the people of New Hampshire, (4 Wh. p. 651;) and, of course, to the people of each separate State." By the treaty of peace, "the powers of government and the *right of soil*, which had previously been in Great Britain, *passed definitely* to these States."—8 Wh. p. 584.

And it was held by the Supreme Court of the United States "that the only territory which in fact belonged to the United States in 1787 (that which lay west of Pennsylvania and north of the Ohio), was acquired by the cession from Virginia," &c.—5 Wh. p. 375.

He remarks, at page 93, that "the original right of the Crown to grant the right of soil and the powers of government in and over the proprietary provinces, and the right of soil in the vacant lands in the royal and chartered colonies, was never drawn in question, after the Revolution, by any of the States on behalf of the confederacy; for whenever the Crown had made a grant, it was universally admitted that it was valid. When the proprietary governments were superseded by those of the States, the proprietaries were left in the quiet enjoyment of their rights of property, as in New Jersey to this day; or the States were suffered to resume their vacant lands, and to hold them without any claim by the other States for any share, as in Pennsylvania, (Vide 1 Dall. L. Pa. 822,) and in Delaware, (2 Laws D. 1074–'5.) But the States which had no vacant lands, denied the ex-

clusive right of those States whose right of boundaries extended originally to the South sea, and after the treaty of peace of 1763 to the Mississippi; and set up a claim to a proportion of the unappropriated lands within the limits of those States, as a common acquisition by the confederation, for the common benefit, in right of conquest, from Great Britain; but admitted the legislative power of the States over them, making no claim to jurisdiction. Those States, however, claimed the lands, on the grounds before stated, as their own, by the *devolution* of the Crown to them, the *guaranty* by the proposed articles of confederacy, and of the *treaty* with France.

"To put an end to all future controversy, it was by the ninth article of the former *provided* 'that no State should be deprived of territory for the benefit of the United States.' Connecting this proviso with the third article, and the second and eleventh articles of the treaty of alliance with France, it is clear that when the confederation became the act of all the States, Congress could, neither by treaty nor otherwise, do any valid act to affect the territorial rights of the States, without a direct violation of the expressed stipulations of both guaranties and this proviso. This was the principal reason why the final adoption of these articles was delayed from November, 1777, till March, 1781. Various attempts were made in Congress to strike out, or so modify this proviso, that the vacant lands should be deemed to be the property of all the States, as a common fund for defraying the expenses of the war; which having all failed, some of the States refused to adopt them. In March, 1780, Congress, finding that the controversy could be no otherwise terminated, recommended to the States to make liberal cessions of their western lands to the United States; to which Virginia and New York agreeing, the articles were signed, and cessions accordingly made by those and other States, which were deemed satisfactory.—Vide 1 Laws U. S. pp. 11, 12, 20, 22, 24, 467 to 482; 5 Wh. 376, 377."

"Now, as no conquests were made by the confederacy, and the possessions of the several States were fixed by the treaty of peace, according to their original boundaries, the confederacy could acquire no territory as possessions or jurisdiction in matters of government; and this court have declared, in four solemn decisions, that they did not." (4 Cr. 212; 6 Cr. 142; 12 Wh. 524; Ib. 534.)

"Taking it, therefore, as a political or judicial question, it has long since been put at rest, not only by the authority of the constitution, and all the departments of the Government, but in public opinion.

It may then be assumed as an unquestioned proposition, that the United States can have no right of soil within any of the States of this Union, unless by a cession from the particular States, or a foreign State, who was the original, absolute proprietary thereof." (Baldwin's Constitutional Views, p. 95.)

[From Wheaton's Reports, volume 8.]

JOHNSON AND GRAHAM'S LESSEE
vs.
WILLIAM MCINTOSH.

[A title to lands under grants to private individuals, made by Indian tribes or nations northwest of the river Ohio, in 1773 and 1775, cannot be recognized in courts of the United States.]

"Mr. Chief Justice Marshall delivered the opinion of the court. The plaintiffs in this case claim the land, in their declaration mentioned, under two grants, purporting to be made, the first in 1773, and the last in 1775, by the chiefs of certain Indian tribes, constituting the Illinois and the Piankeshaw nations; and the question is, whether this title can be recognized in the courts of the United States?

The facts, as stated in the case agreed, show the authority of the chiefs who executed this conveyance, so far as it could be given by their own people; and likewise show that the particular tribes for whom these chiefs acted were in rightful possession of the land they sold. The inquiry, therefore, is, in a great measure, confined to the power of Indians to give, and of private individuals to receive, a title which can be sustained in the courts of this country.

"The exclusion of all other Europeans necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves; and to the assertion of which, by others, all assented.

"Those relations which were to exist between the discoverer and the natives, were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them.

"While the different nations of Europe respected the right of the natives as occupants, they asserted the ultimate dominion to be in

themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in the possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.

"The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles.

"The charter granted to Sir Humphrey Gilbert, in 1578, authorizes him to discover and take possession of such remote, heathen, and barbarous lands, as were not actually possessed by any Christian prince or people. This charter was afterwards renewed to Sir Walter Raleigh, in nearly the same terms.

"By the charter of 1606, under which the first permanent English settlement on this continent was made, James I granted to Sir Thomas Gates and others, whose territories in America lying on the seacoast between the 34th and 45th degrees of north latitude, and which either belonged to that monarch, or were not then possessed by any other Christian prince or people.

"The grantees were divided into two companies, at their own request. The first, or southern colony, was directed to settle between the 34th and 41st degrees of north latitude; and the second, or northern colony, between the 38th and 45th degrees.

"In 1609, after some expensive and not very successful attempts at settlement had been made, a new and more enlarged charter was given by the Crown to the first colony, in which the King granted to the 'treasurer and company of adventurers of the city of London for the first colony in Virginia,' in absolute property, the lands extending along the seacoast four hundred miles, and into the land, throughout from sea to sea. This charter, which is a part of the special verdict in this cause, was annulled, so far as respected the *rights* of the company, by the judgment of the Court of King's Bench, on a writ of *quo warranto;* but the whole effect allowed to this judgment was, to revest in the Crown the *powers* of government, and the *title* to the lands within its limits.

"At the solicitation of those that held under the grant to the second or northern colony, a new and more enlarged charter was granted to the Duke of Lenox and others, in 1620, who were denominated the Plymouth Company, conveying to them, in absolute property, all the lands between the 40th and 48th degrees of north latitude.

"Under this patent New England has been, in a great measure,

settled. The company conveyed to Henry Rosewell and others, in 1627, that territory which is now Massachusetts; and in 1628, a charter of incorporation, comprehending the powers of government, was granted to the purchasers.

"Great part of New England was granted by this company, which at length, divided their remaining lands among themselves, and in 1635 *surrendered* their charter to the Crown. A patent was granted to Georges for Maine, which was allotted to him in the division of property.

"All the grants made by the Plymouth Company, so far as we can learn, have been respected. In pursuance of the same principle, the King, in 1664, granted to the Duke of York the country of New England, as far south as the Delaware bay. His Royal Highness transferred New Jersey to Lord Berkely and Sir George Carteret.

"In 1663 the Crown granted to Lord Clarendon and others the country lying between the 36th degree of north latitude and the river St. Mathes; and in 1666 the proprietors obtained from the Crown a new charter, granting to them that province in the King's dominions in North America which lies from 36 degrees 30 minutes north latitude, to the 29th degree, and from the Atlantic ocean to the South sea.

"Thus has our whole country been granted by the Crown while in the occupation of the Indians. These grants purport to convey the *soil*, as well as the *right of dominion*, to the grantees. In those governments which were denominated royal, where the right to the soil was not vested in individuals, but remained in the Crown, or was vested in the colonial government, the King claimed and exercised the right of granting lands, and of dismembering the government at his will. The grants made out of the two original colonies after the *resumption* of their charters by the Crown, are examples of this. The governments of New England, New York, New Jersey, Pennsylvania, Maryland, and a part of Carolina, were thus created. In all of them, the soil, at the time the grants were made, was occupied by the Indians; yet almost every title within those governments is dependent on these grants. In some instances the soil was conveyed by the Crown unaccompanied by the powers of government, as in the case of the northern neck of Virginia. It has never been objected to this, or any other similar grant, that the title, as well as possession, was in the Indians when it was made, and that it passed nothing on that account.

"Thus, all the nations of Europe who have acquired territory on this continent, have asserted in themselves, and have recognised in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians. Have the American States rejected or adopted this principle?

"By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the 'proprietary and territorial rights of the United States,' whose boundaries were fixed in the second article. By this treaty, the *powers* of government, and the *right* to soil, which had *previously* been in Great Britain, *passed definitely to these States.* We had before taken possession of them, by declaring independence; but neither the *declaration of independence,* nor the treaty confirming it could *give us more* than that which we *before possessed,* or to which Great Britain was before entitled.

"It has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary-lines described in the treaty, subject only to the Indian right of occupancy; and that the exclusive power to extinguish that right was vested in that Government which might constitutionally exercise it.

"Virginia, particularly, *within whose chartered limits the land in controversy lay,* passed an act, 1779, declaring her 'exclusive right of pre-emption from the Indians, of all the lands within the limits of her own chartered territory, and that no person or persons whatsoever have, or ever had, a right to purchase any lands within the same, from any Indian nation, except only persons duly authorized to make such purchase—formerly, for the use and benefit of the colony; and lately, for the commonwealth. The act then proceeds to annul all deeds made by Indians to individuals, for the private use of the purchasers.

"Without ascribing to this act the power of annulling vested rights, or admitting it to countervail the testimony furnished by the marginal note opposite to the title of the law, forbidding purchases from the Indians, in the revisals of the Virginia statutes stating that law to be repealed, it may safely be considered as an unequivocal affirmance, on the part of Virginia, of the broad principle which had always been maintained—that the exclusive right to purchase from the Indians resided in the Government.

"In pursuance of the same idea, Virginia proceeded, at the same session, to open her land office for the sale of that country which now

constitutes Kentucky—a country, every acre of which was then claimed and possessed by Indians, who maintained their title with as much persevering courage as was ever manifested by any people.

"The States having within their *chartered limits* different portions of territory recovered by Indians, ceded that territory generally to the United States, on conditions expressed in their deeds of cession, which demonstrate the opinion that they ceded the soil as well as jurisdiction, and that, in doing so, they granted a productive fund to the Government of the Union. *The lands in controversy lay within the chartered limits of Virginia, and were ceded with the whole country northwest of the river Ohio.* This grant contained reservations and stipulations, which *could only be made by the owners of the soil;* and concluded with a stipulation that 'all the lands in the ceded territory, not reserved, should be considered as a common fund, for the use and benefit of such of the United States as have become, or shall become, members of the confederation,' &c., 'according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever.'

"The ceded territory was occupied by numerous and warlike tribes of Indians; but the exclusive right of the United States to extinguish their title, and to grant the soil, has never, we believe, been doubted.

"The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave, also, a right to such a degree of sovereignty as the circumstances of the people would allow them to exercise.

"The power now possessed by the Government of the United States to grant lands, resided, while we were colonies, in the Crown, or its grantees. The validity of the titles given by either has never been questioned in our courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with and control it. An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title—or at least a title which excludes all others not

compatible with it. All our institutions recognise the absolute title of the Crown, subject only to the Indian right of occupancy, and recognise the absolute title of the Crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

"However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear—if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property of the great mass of the community originates in it—it becomes the law of the land, and cannot be questioned. So, too, with respect to the concomitant principle, that the Indian inhabitants are to be considered merely as occupants—to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by courts of justice.

"This question is not entirely new in this court. The case of *Fletcher vs. Peck* grew out of a sale made by the State of Georgia of a large tract of country within the limits of that State, the grant of which was afterwards resumed. The action was brought by a subpurchaser on the contract of sale; and one of the covenants in the deed was, that the State of Georgia, at the time of sale, was seized in fee of the premises. The real question presented by the issue was, whether the seizin in fee was in the State of Georgia or in the United States. After stating that this controversy between the several States and the United States had been compromised, the court thought it necessary to notice the Indian title, which, although entitled to the respect of all courts until it should be legitimately extinguished, was declared not to be such as to be absolutely repugnant to a seizin in fee on the part of the State.

"This opinion conforms precisely to the principle which has been supposed to be recognised by all European governments, from the first settlement of America. The absolute, ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring. Such a right is no more incompatible with a seizin in fee, than a lease for years, and might as effectually bar an ejectment.

"Another view has been taken of this question, which deserves to be considered. The title of the Crown, whatever it might be, could be acquired only by a *conveyance from the Crown.* If an individual might extinguish the Indian title for his own benefit—or, in other words, might purchase it—still he could acquire only that title. Admitting their power to change their laws or usages so far as to allow an individual to separate a portion of their lands from the common stock, and hold it in severalty, still it is a part of their territory, and is held under them, by a title dependent on their laws. The grant derives its efficacy from their will; and if they choose to resume it, and make a different disposition of the land, the courts of the United States cannot interpose for the protection of the title. The person who purchases lands from the Indians, within their territory, incorporates himself with them, so far as respects the property purchased; holds their title, under their protection, and subject to their laws. If they annul the grant, we know of no tribunal which can revise and set aside the proceeding. We know of no principle which can distinguish this case from a grant made to a native Indian, authorizing him to hold a particular tract of land in severalty.

"The proclamation issued by the King of Great Britain in 1763, has been considered, and we think with reason, as constituting an additional objection to the title of the plaintiffs.

"By that proclamation, the Crown reserved under its own dominion and protection, for the use of the Indians, 'all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest,' and strictly forbade all British subjects from making any purchases or settlements whatever, or taking possession of the reserved lands.

"It has never been contended that the Indian title amounted to nothing. Their right of *possession* has never been questioned. The claim of Government extends to the *complete ultimate title*, charged with this *right* of possession, and to the *exclusive* power of acquiring that right."

After such an array of facts and authorities in favor of the claims of Virginia to *all* the territory which she either ceded to the United States, or reserved to herself, we may pronounce the points mooted by Mr. Hall, as "*coram non judice*," and therefore, that the verdict of the committee on that account, and for other reasons, "*non constat.*"

Mr. Hall, in the conclusion of his argument, in that portion of the

report which we have reviewed, not content with advancing what we have already considered, proceeds emphatically to express an opinion no less extraordinary than those we have just noticed. Notwithstanding our unwillingness to dwell on this subject, yet we would consider that we had imperfectly discharged our duty, were we to omit placing this assertion of his also in its proper light before the country. But, in undertaking to do that, we propose to be as concise as the nature of the allegation would admit, and we hope, after having removed his more elaborate and learned objections against satisfying the outstanding revolutionary land bounty warrants, we shall be able to despatch his minor difficulties, equally as satisfactorily, and with more brevity.

In report No. 1063, page 62, we find the following: "On the contrary, it very clearly appears to the committee that the title of Virginia to the land ceded by her, as well as to a large portion of the lands retained and reserved by her, was of an extremely doubtful, not to say of a very flimsy character; and that the cession, when made, was as *much* for *her* own interest and benefit, as for the interest and benefit of the *United States.*"

Mr. Hall thus concludes that learned portion of his speculations about the boundaries, chartered rights, and claims of Virginia to the western territory, which, at the instance of *this* Government, she ceded on certain conditions to the United States. He roundly asserts that "the cession, when made, was as *much* for *her* own interest and benefit, as for the interest and benefit of the *United States;*" and this inference he rests upon the assumption that "the title of Virginia to the land ceded by her, as well as to a large portion of the land retained and reserved by her, was of an extremely doubtful, not to say of a very flimsy character." But as we have, in the introductory part of this report, conclusively established the right and title of Virginia to *all* the lands contained in her ancient chartered limits, with the restrictions mentioned in her constitution, adopted the 29th of June, 1776, wherein her boundaries are clearly set forth; we, therefore, deem it amply sufficient to remark, in this place, that, inasmuch as the *foundation* on which this inference of Mr. Hall rested was altogether illusory and fanciful, his conclusion must necessarily be impotent and worthless.

In connexion with this view of the subject, we propose cursorily to examine the amount of gross revenue which this Government has derived from the several portions of territory ceded by the different

States to the Federal Government. The disposition manifested in the reports under review to *disparage*, both by every variety of argument and by insinuation, the just claims of Virginia, and thereby to impair the desire heretofore manifested by this Government to consider them favorably, impels us, in reply, to touch upon a topic which a sense of propriety, if no other reason could be found, should have dissuaded Mr. Hall from so elaborately arguing in his report. No ignoble desire of drawing invidious comparisons, nor of disparaging either or any of the States of this Union, or in any way to question the course of policy which the Federal Government has deemed it proper to pursue in relation to this subject, has influenced our conduct on this occasion. On the contrary, we hold it in as bad taste to magnify the liberality of States as of individuals; and with equal justice it is maintained, that wantonly to disparage either, is equally repugnant to every consideration of propriety.

While the data presented for our consideration are not altogether definite as regards the precise amount derived from the sales of lands which *each* particular State may have ceded; yet in some instances they are so, and in others, when viewed in conjunction with what is *usually admitted* to have been the district *respectively* ceded by each State, we can arrive at an approximation sufficiently near the exact point to enable the House of Representatives to draw such deductions as we think will heighten rather than diminish the disposition heretofore manifested to pay in full all the remaining land bounty claims. This laudable policy of satisfying these old revolutionary debts, we humbly conceive will be yet farther promoted by contrasting the foregoing with the various returns or donations in land which Congress was required, or has seen fit, to accord to particular States since accepting the deeds of cession.

By reference to the various deeds of cession, it will be found that some of them contained special reservations in favor of the States granting the lands, while others did not. It is not material to our purpose to inquire into the reasons which induced some of the States to make those reservations, as it is sufficient simply to state the fact, and the extent and character of those reservations.

Virginia, in her deed, required her expenses in subduing and defending the ceded territory to be reimbursed; that 150,000 acres of land should be allowed and granted to Clarke's regiment; that in case of there being a deficiency of good lands on the southeast side of the Ohio to satisfy the land bounties due the troops of her continental line,

it should be made up of *good* lands on the northwest side of the Ohio, between the Scioto and Little Miami rivers.

For the last-mentioned purpose, the troops of the continental line have located warrants in Ohio to the extent of - - -	3,550,000 acres.
And Congress has appropriated in land scrip, at different times, to satisfy the troops of the State and Continental lines, and the State navy, -	1,460,000 acres.
	5,010,000 acres.
Military lands reserved for Clarke's regiment, -	150,000 "
Total,	5,160,000 acres.

Connecticut made her deed of cession on September 14, 1786. She then ceded her claims to the territory lying between the 41st and 42d degrees of north latitude, and west of a line 120 miles west of the western boundary of Pennsylvania. She "reserved a tract of land on Lake Erie, bounded on the south by the 41st degree of north latitude, and extending westwardly 120 miles from the western boundary of tho State of Pennsylvania. The cession of Massachusetts and New York included an insulated tract, commonly called 'the triangle,' lying on lake Erie, west of the State of New York, and north of that of Pennsylvania; and which has since been sold by the United States to Pennsylvania.

"North Carolina ceded to the United States all her vacant lands beyond the Allegany chain of mountains, within the breadth of her charter; that is to say, between 35° and 36° 30′ of north latitude, the last parallel being the southern boundary of the States of Virginia and Kentucky. That territory which now forms the State of Tennessee was, however, subject to a great variety of claims described in the act of cession; and Congress has, by the act of April 18, 1806, ceded to the last-mentioned State the claim of the United States to all the lands east of a line described in the act, leaving the lands west of that line still liable to satisfy such of the claims secured by the cession from North Carolina as cannot be located in the eastern division."

"South Carolina and Georgia were the only States which had any claim to the land lying south of the 35th degree of north latitude. By the cessions from those two States, the United States have acquired the title of both to the tract of country extending from the

31st to the 35th degree of latitude, and bounded on the west by the Mississippi, and on the east by the river Chatahooche, and by a line drawn from a place on that river, near the mouth of Uchee creek, to Nickajack, on the river Tennessee." As a condition of the cession from Georgia, the Indian title to the lands within her present boundaries was to be extinguished at the expense of the United States, and she was also to receive 1,250,000 dollars out of the proceeds of the first sales of lands in the ceded territory.—1 vol. Laws U. S. pp. 452 and 453.

It is plainly seen, from the foregoing, that the deeds of Virginia, North Carolina, Georgia, and Connecticut, contained large and special reservations in favor of those States, and that the deeds of the remaining States did not. The history of the times seems clearly to establish that it was the aim and policy of those States ceding their territory, that *all* of the *good* and *valid* claims of the *citizens* of either of those States to portions of the ceded territory *should* be properly and adequately guarded and protected.

Certainly it would have been a most singular transaction for those States, placed under legislative obligations to their citizens, not only to disregard such a state of facts, but to divest themselves of the ability to redeem these solemn promises whenever they should be demanded. Such a course would have been contrary to justice and common sense. Virginia, in ceding her territory, was not only mindful of this consideration, but thought she had made the most ample provision to guard against all contingencies.

Her *continental line* is especially *provided* for in the deed. Have *all* those claims been liquidated? We answer in the negative. Then should they be paid? We answer, that all bona fide claims against the Government should be paid.

Have all of her other debts incurred in prosecuting the war of the Revolution been paid? Again we answer in the negative; for there are yet *outstanding* land bounty claims due her State line and navy. And those troops participated as fully, as freely, and as successfully in that great struggle for independence as those of the continental line. Their claims are deemed equally meritorious, and they are doubtless embraced within the scope and intention of the act of Congress of 1790, which purported to assume the debts of the Revolution. But we will for the present waive urging this point, and proceed with our comparative statements.

In the annexed tabular statement from Colonel Thomas H. Blake,

Commissioner of the General Land Office of the United States, a full and comprehensive exhibit is made—first, of the entire area or number of acres ceded by the different States; secondly, of the gross proceeds of the sales of the public lands ceded to this Government by each respective State; thirdly, the number of acres yet unsold; and, fourthly, the amount in money which it has cost this Government to extinguish the Indian titles to the various portions of territory ceded by each State. Also, in the explanatory notes, we find stated the several reservations or payments to particular States, as well as amounts paid to extinguish Indian titles in some of the States ceding their western territory. Before adverting more particularly to this table, we will simply recall to mind what has been established in the preceding part of this report, viz: that Virginia rightfully claimed, not only up to the 41st degree of north latitude, from the western boundary of Pennsylvania, but that, by the treaty made in 1763 by Great Britain with France, in consequence of Virginia having involved Great Britain in a war with that power, by vindicating her right of soil, which France had encroached upon, Virginia then had her northern limits extended out to the lakes. But as it is not our purpose to do more than to *disprove* the imputations of Mr. Hall, that "the cession, when made, was as *much* for *her own* interest and *benefit* as for the interest and benefit of the United States," we will, in our efforts to accomplish this purpose, not aim, therefore, to show the highest possible results which Virginia might lay claim to, but content ourselves with keeping within a limit which, it is believed, few (if any) will question as being legitimate, after examining what has been advanced in support of the right and title of Virginia to *all* the territory which she ceded to this Government. The charter of Connecticut, it has been shown, prohibited her from coming south of the 41st degree of north latitude, and Virginia claimed up to the 41st degree. So, therefore, as we have shown heretofore, that neither Connecticut nor any northern colony could, under their charters, claim below the 41st degree of north latitude, all the territory south of that parallel to the North Carolina line being included within the limits of Virginia, *clearly* belonged to her. On this account, and for the reasons above stated, we will only extend our estimates and comparative statements, so far as Virginia at present is interested, to the ceded territory lying south of the 41st degree of north latitude; and with our base thus restricted, we think it can be conclusively shown that the *reverse* of what Mr. Hall declares is true. Adopting the

41st degree north latitude as our nothern limit, in making this comparative statement, it will be found, by an inspection of the map of the United States, that about four-fifths of the entire area of Ohio, Indiana, and Illinois, is situated south of that parallel. Then we have but to take four-fifths under the several heads in the annexed table referring to those States, and we obtain the data for our calculation, which, having been carefully made out, we also append, in order that we may the more satisfactorily present our views. In addition, we propose to present a statement of the various valuable considerations, reserved, or received, by several of the States, from this Government, since making their deeds of cession.

GENERAL LAND OFFICE,
April 12, 1844.

SIR: In accordance with your request, I enclose herewith a statement showing the area of the territory ceded to the Federal Government by Virginia, New York, Massachusetts, Connecticut, North Carolina and Georgia; the gross amount of money received by this Government on account of sales from that territory; the number of acres remaining unsold; and the amount in money, goods, &c., which it has cost the Government to extinguish the Indian title to those lands.

I have the honor to be, very respectfully, your obedient servant,

THO. H. BLAKE, *Commissioner.*

HON. E. W. HUBARD,
House of Representatives.

[The concluding portion of report omitted.]

COPIED FROM THE BRITISH ARCHIVES.

S. P. O.
Colo. Vol. 6, No. 59. } Considerations, &c., 20 June, 1632.

Considerations upon the patent to the Lord Baltimore, dated 20 June, 1632.

Matter of Lawe.

1. Because the matter of the peticion of the patentee mentioned to be the motive and the cause of the grant, is (viz.) that the region thereby granted was then unhabited and possessed of the barbarous heathen or savages.

Is not so, for in truth part of the said region had bin formerly inhabited by his majesties subjects which were sent over from the London colony of Virginia.

2. There is intended to be granted the libertyes of a county palantine, and there is no exception of writts of error, or of the last appeale to the king, as by law ought to be.

3. Habend prout aliquis epus dundmensis infra et unquam antehac habuit vel habere potuit, which I think is to generall and incertaine, because it doth not name any one certaine Bishop of Durham, to whom it may referr; and the county palantine of Durham was altered 27 Hen. 8 c. 24. That the justices must bee made in the king's name and by his authority.

4. By the patent of 10 April, 4 Jac. the king doeth grant and agree that Sir Thomas Gates, &c., and all such others as are and shall be joined to them of that colony shall begin their first plantation where they think fitt, between the 34 and 41 degrees of the said latitude, and have 50 miles from the place of their first plantation all alongst the sea-coasts, together with all the islands within an hundred mile; and an 100 mile to the land, and none permitted to inhabitt or plant on the back of the colony fol. 4 and 5.

5. By the Lord Baltimore's patent this election is taken away and part granted to him, viz.: from Watking Point south, which is in the 38 degrees of latitude to Lawares Bay north, which is in the 41 degree of latitude or thereabouts.

ACCOMACK C. H., Va.
Mar. 22d, 1871.

DEAR SIR:

The enclosed copies were made and forwarded to you by direction of Mr. Gillet.

Very respt.,

M. OLDHAM, JR., D. C.

To Gen'l HENRY A. WISE

RICHMOND, May 17th, 1871.

I have read and carefully compared the following pages with the copy of the Record of the clerk's office of the court of the county of Accomack, furnished by the clerk of said county, and can vouch for their being a correct transcript.

C. E. SNODGRASS.

SCARBURGH REPORT.

To ye Hon'ble Gov'nr and Counsell of Virginia, Edm. Scarburgh humbly presenteth ye account of proceedings in his Majis. affaires at Anamessecks and Manoakin on ye Eastern Shoare of Virginia :

Accompanied w'th Coll. Stringer, foure of ye comission, and about fourty horsemen, whom I tooke w'th me for pomp and safety, and to repell yt contempt w'ch I was informed some Quakers and a foole in office had threatened to obtrude, wee came to Anamessecks on Sunday night, being ye 11th of October last past. On Monday morning, at ye house of Stephen Horssy, an officer of ye Lord Baltimore, I began to publish ye comands of ye assembly, and for yt ye officer could not read. I often read ye act unto him, who made me noe reply, but brought a pattent in stead of his comission, and tould us their was his authority, and yt hee was put in trust by ye lord leift. of Maryland, and he would not be false to his trust w'th more like that.

Hee was answered that their could be noe trust where there was no interest, that it was evident by ye Lord Baltimore's bounds he had noe lands to ye Southward of Watkins point, and yt that question was determined by a power beyond private men's controverting. Wherefore all that was required of him was, that he would please to subscribe his obedience to his majis. according to ye act of assembly, and peaceably enjoy his lands, goods, &ct., which his majis gov'nor would protect as his ma'ties subjects. But if he refused to conforme his obedience, I should arrest him to answer before his majis gov'nor for his contempt and rebellion. At this ye said officer, something startled, and said, put case, I doe underwrite my obedience and many more. The gov'nor of Maryland will come so soone as you are gone and hang me and them at o'r doores. It was answered him, that hee thought to unworthely of ye lord leift., and yt it was a tiranny not imaginable to be done. The officer answered, such things has bin done in Maryland, and therefore I dare not subscribe. Then haveing spent much time, and consulting w'th our military and civil officers,

it was resolved as ye best expedient to arrest him, and take some of o'rselves for security for his appearance before ye hon'ble gov'nor and counsell, and sett ye broad arrow on ye doore. So thus proceeding wee went to ye house of Ambrose Dixon, a Quaker, where a boat and men, belonging to Groomes Shipp, and two running Quakers were, also George Johnson and Thomas Price, inhabitants and Quakers. Their publishing he act of assembly w'th a becoming reverence, w'ch ye Quakers scoft and dispissed, George Johnson, filled w'th ye spirit of nonsence, talked till hee forgot w't hee said, and speaking much from ye purpose, I thought not my part to spend time as he did. But briefly demanding their obedience, and they all refusing, I proceeded to arrest them to appeare before ye hon'ble gov'nor and councell to answer their contempt and rebellion, offering to take one ye other as securities for their appearance. But they refusing, I sett ye broad arrow on the doore, and so marched of to Henry Boston's, where publishing ye act hee desired consideration a day or two, and then hee would attend, so wee departed thence to Manoakin, where I sent sumons for all ye housekeepers and freemen to appear, who coming in most willing and cheerfully they all subscribed except Mr. John Elzey and Capt. William Thorne, who being officers for ye lord Baltimore desired respite of time, untill they could returne their commissions w'ch they engaged their words and reputation to performe so soon as possible. Their I held his ma'jis court of survey and had ye assistance of ye comissions therein.

Then all the people made entries of their lands and acknowledgements of conveyances, &c., of lands, they all desiring ye Hon. the govno'r of Virginia's protection, as his ma'jis subject, which wee did assure them of, so farr as was in o'r powers. They also complained of a late invasion from ye Indians, and great danger of being cutt of, and said they sent to Maryland to ye lord left for aid, who after about fourteen daies delay had a letter of advise to stand on their owne guard, ffor they had more than enough to doe in Maryland soe that these people said they were owned for profit, and deserted in distress.

That if a report of Col'l Scarburgh's coming w'th troops of horse had not prevented together with a sloop of his full of armed men seeking runaways had not hapened therein y't juncture of time to ye terror of Indian, they had undoubtedly bin cutt of therefore desired course to be taken therein, w'ch, accordingly was done. They further desired y't in regarde of ye remotnes of officers, and ye intermixed neighborhood of Quakers, and ye confusion they did and might

produce, that officers might be ther appointed, w'ch they were also assured to expect so soon as I could give ye Hon'ble gov'nor and councell account of the affairs; some of them also discoursed of ye Lord Lef't of Maryland's claime to Manokin and all ye other places Anancock, to which it was answered that whilst ye euonius proclamation was uncontroled. That declares Anancock to be Maryland's Southern bounds it might be so received. But since occasion made ye gov'ment of Virginia not only reverse that proclamation. But also by this present act of Assembly ye certaine bounds of ye Lord Baltimore's pattent was declared, and that of ye Lord Lef't had ought to say, hee was referred by ye act to persons and place.

Therefore, they need not trouble themselves therein, ffor ye question apertained to higher powers and above private men's controverting at w'ch they were well satisfied and desired protection of their persons and estates from any pretenders under ye s'd lord, w'ch being assured them, they departed well satisfied. At that time one Hollinsworth, marchant, of a Northern vessell, came and presented his request for liberty of trade, w'ch I doubted was some plott of ye Quakers, and yt it was their hopes to interrupt ye compliance of those at Manoakin by imagining I would demand customs and other charge upon w'ch hee should take occasion to depart, and then ye Quakers to upbraid ye obedient w'th this lost trade by reason of impositions, and therefore urdge them to recede in tyme, but to defeat their designe, I presumed in their infant plantation to give ffreedom of trade w'thout impossitions, w'ch when ye peple perceived, some said ye Quakers were lyers, ffor they had prophesied, otherwise I hope this will not be ill taken if the tyme, place and occasion be considered, it may be otherwise ordered hereafter when it shall be thought fitt. Then came Stephen Horssy and Henry Boston, who appeared according to promise, and ye said Horssy pretended hee would visit us next morning, and pass upon ye same resolves, as Mr. Elzey and Capt. Elcorn had done, that was to lay downe his commission and then subscribe his confermity. But hee never saw us more, and as wee are informed, carried away Boston w'th him, and advised others to rebellion, and to this day w'th ye Quakers bids defiance to ye gov'm't of his majis. country of Virginia, boasting their insolences and forgeries.

The number and quallification of this rout I shall recount. Stephen Horssy, ye ignorant yet insolent officer, a cooper by proffession, who lived long in ye lower parts of Accomack, once elected a burgess by ye comon crowd, and thrown out by ye assembly for a factious and

tumultuous person, a man repugnant to all gov'mt of all sects, yet professedly none, constant in nothing but opossing church gov'm't, his children at great ages yet uncristned. That left ye lower parts to head rebellion at Anamessecks, where hee now liveth, and stands arrested, but bids defiance untill by stricter order delt w'th.

George Johnson, ye proteus of heresy, who hath bin often wandering in this county, where hee is notorious for shiffting scismattical pranks, at length pitched at Anamessecks, where hee hath bin this yeare and made a plantation ; a knowne drunkard, and reported by ye neighbors to be ye father of his negro wenches bastards, suspected to be made away privately and w'th stands gov'm't for feare of justice, hee now professeth quaking and to instruct others, who is himself to learn good manners, calling ye obedient subjects villians, rogues and forsworne persons for their subscribing, stands arrested to appear before ye hon'ble gov'nor, and bids defiance untill stricted course be taken.

Thomas Price, a creeping Quaker, by trade a leather dresser, whose conscience would not serve to dwell amongst ye wicked, and therefore retired to Anamessecks, where he hears much and saith nothing els, but y't hee would not obey gov'nt, for w'ch he also stands arrested.

Ambrose Dixon, a caulker by profession, that lived long in ye lower parts, was often in question for his quaking profession, removed to Anamessecks, there to act what hee could not be here permitted, is a prater of nonsence, and much led by ye spirit of ignorance for w'ch he is followed. A receiver of many Quakers, his house ye place of their resort, and a conveyor of o'r ingaged persons out of ye county, averse to gov'nt, for which hee stands arrested and ye broad arrow on his doore, but bids defiance until severer course reforme him.

Henry Boston, an unmanerly fellow, y't stands condemned on o'r records for slighting and condemning ye laws of ye county, a rebell to gover'nt and disobedient to authority, for w'ch he received a late reward w'th a rattan and hath not subscribed, hid himself and so escaped arrest.

These are all, except two or three, loose fellows, y't follow ye Quakers for scrapps, whome a good whipp is fittest to reforme.

Some days since ye people of Manoakin and ye parts adjoining, made request to ye court for means of safety, in respect y't several strange speaches were spread by ye Quakers, and their adherents, whereupon the court of Accomack made ye following order :

At a court held in Accomack county, ye 10 day of November, by

his Maj'es justices of ye peace for ye s'd county, &c., and in ye yeare of our Lord God, 1663.

Present—Capt. Geo. Parker, Major Jno. Eilmy, Mr. Jno. West, Mr. Edw. Bowman, Mr. Devor. Browne, Mr. Hugh Yeo, Mr. Jno. Wisse.

Whereas his Maj'es good subjects inhabiting Manoakin and other remote parts of this country, having lately conformed their obedience by subscription to ye act of Assembly, w'ch ye Quakers and some other factious people for their owne ends have refused, and doe persist in that rebellion, and reporting as from the Lord Leift of Maryland, many mutinous and factious speeches, tending to breach of peace, disturbance of ye people's quiet in those parts, which wee rather believe to arise from their own inventions. Then so Hon'ble a person as ye Lord Leitt of Maryland, nevertheless, to prevent ye designs of those people Quakers whome his Majis hath declared to endeavour the subversion of gov'nt, and to secure those good subjects, who by their requests have sought this court for means of protection. The court have thereupon ordered that natill his Maji's gov'nt can be fully informed of this affair and provide a fitter expedient, that Capt. Wm. Thorne, an officer under Coll. Scarburgh, Mr. Randall Revell, Mr. Wm. Bosman and Mr. Jno. Rhodes, all or any of them be qualified w'th sufficient authority to call together and comand all his Maj'is's good subjects at Manoakin and all other parts of this county so farr as Pokomoke river to come together and arme themselves only for defence against any person or p'sons y't shall invade them, to the disturbance of ye people or their estates, and breach of his Maj'is's peace, w'ch to conserne the court hath taken this case and course and y't it may appear absolute necessary, wee have annexed ye rumors that ye Quakers and factious fooles have spread to ye disturbance of ye peace and teror of ye less knowing, w'ch we are assured doth arise from ye Quakers, more than ye Lord Leift of Maryland, or any other civill or ingenious person; and y't ye wicked plott and contrivance of ye said Quakers and factious fools may be prevented, have taken this course for ye safety of his Maji's good subject.

Some of ye reports are these :

That ye Lord Leift. of Maryland will hang all those his ma'jis subjects that have subscribed their obedience to his ma'jis govm't of Virginia.

That ye govn'r of Virginia, for medling, hath a peace of green wax sent for him.

That one Jolly intends to settle at Pocomoke river on some of ye people's lands of this county and to hold it vi et armis.

That Coll. Scarburgh, for executing ye gov'nor of Virginia and grand assembly's comands deserves to be hanged, and more stuff like this.

This is ye full account of ye proceedings to this day, as concerning ye performance of ye grand assembly's comands, and ye consequences thereof, it resteth w'th your honors to direct w't farther course is to be taken. I writt to ye Lord Leift. of Maryland and sent ye copy of ye act, to w'ch I added my readiness to attend w'th Mr. Cathel and Mr. Laurance if his hon'r did desire it, but have received noe other answer but a capitulatory letter, w'ch I have sent herew'th, presumeing ye lord leift. has personated his afaires w'th ye hon'ble govn'or at Jamestown; though I suppose, according to ye act of assembly, there ought to have bin a meeting on ye Eastern shore, w'ch ye Quakers say is contemned. Whatever my own person may bee, I presume ye officer I present is not so unworthy, nor w. persons of those joynee w'th me; nor when they come to try all shall they find y't affair negotiated w'th less repute than becomes such a concerne. Were only now expert either some particular orders or leave it to ye court of Accomack to proceed as occasion shall serve for ye peace and safety of his majis subjects. I suppose ye lawes of o'r country put in execution will order ye Quakers, whose interest will never permit their consciences to comply w'th y't govm't w'ch is inconsistent w'th their affairs. Therefore strictest course might be taken, and if comanded, though they are not free to come, they shall be brought before yo'r hon'rs by yo'r most humble servant.

EDM. SCARBURGH.

Capt. William Jones, justice of peace and quorum in his majis county of North'ton, Virginia, doth declare on oath, y't about thirty-five or thirty-six years since hee did offten sale a trading w'th ye Indians in ye bay of Chessepiack, and well knew ye river Pokomoke, w'ch lyeth to ye Southward of a little point described in Capt. Smith's Mapp w'thout a name, and is so far Southward as a man can see from ye place described in Capt. Smith's Mapp for Watkins point; and doth affirm y't ye said river of Pokomoke was then soe called, and noe such name as ye river Wighco, either at y't tyme or in ye memory of man before, was applyed to ye river of Pokomoke, and y't ever since ye said river, soe sciturted as aforesaid, hath bin and is called by ye name of Pocomoke river. And farthermore this depo-

nent saith, y't in the time hee was a married man and a trader in y't bay of Chessepeak, John Nutwell was a boy and servant to Hugh Hayes, and was run away from his said master, and this deponent gave a hoe to ye Indians for ye said Nutwell, and brought him home again, well straped w'th ye hallyards. Soe farr this deponent maketh oath.

WILL. JONES.

Sworne in open court ye 19th of July, 1664.

Test,

ROB'T HUTCHINSON,
Cls. Cur. Co. Accom'k.

The severall persons subscribed doe make oath yt they have of long time past heard of and knowne ye river of Pokomoke, and yt ye said river hath bin so called tyme out of mind, both by ye report of ye Indians and knowledge of ye subscribers, and is to this day so called, being a river on ye Easterne shore of Chessepeack bay in Virginia, lying to ye southward of a small spirall point on ye southside of Aamessecks, and yt point is to ye southward of ye place described in Capt. Smith's mapp for Watkins point, so farr as a man can see in a clear day, and yt said river of Pokomoke, and so situate as aforesaid is so called to this day.

EDM. SCARBURGH,
WILL JONES.
GEO. PARKER.
ANTO. HODGKINS.
JNO. RENNY.
JNO. WISE.
EDW. REVELL.
CHARLES SCARBURGH.

Sworne in open court ye 19th of July, 1664.

Test,

ROBT. HUTCHINSON,
Cls. Cur. Co. Accom'k.

The foregoing are correct copies from the records of the clerk's office of the county of Accomack.

Test,

M. OLDHAM, Dy:
For WM. H. B. CUSTIS, C. A. C.

1871. Mar. 21st.

Clerk's fee for copies, &c., $2 89c.

Conference between Lord Baltimore and Wm. Penn.

State Papers, Colonial, Maryland, vol. 43, p. 149-153.
(Dec'r 13th, 1682.)

A Conference held betweene the Right Hon'ble the Lord Baltimore, Proc. of Maryland, an William Pen, Esq'r, Proprietary of Pensilvania, at the house of Col. Thomas Tailler, on the Ridge in Ann Arrundell county, Wednesday, the 13th of Dec'r, 1682, viz:

William Pen, Esq'r, declares in a very florid manner, his real and hearty inclinations to maintain and keepe a neighborly and friendly correspondence with his lapp and the people of this province, that it was not the ambition of gover'ment or dominion that flatter'd him into these parts of the world, but meerely to secure his owne that movee him to come into this country, which, since it was his fortune, he well enough liked, and shall studdy all wayes and meanes imaginable to approve himselfe a good neighbor, he then produces a letter from the king to the Lord Baltemore as a foundation or introduction to theire further discourse.

His lopp haveing read the letter, answers, viz:

Ld. B.: His majesties letter I receive with all respect, and with that sense of my duty as becomes me, but by the purport of this letter I conceive his Maj'tie hath received some misinformation, for the cleering of which I have here not only a coppy of mine, but a transcript of your pattent, by both which we must be govern'd, I

haveing for my Northern bounds the fortieth degree of Northern latitude, which by your patent is your Southern bounds, as Watkins point is mine.

(His lordship then reads the bounds in the pattent.)

William Pen, Esq'r. By my petition to the king, I craved five degrees northward, the lords told me it was a great deale of land that my Lord Baltemore had, but two to which I replyed that the difference was vastly great on my Lord Baltemore's side as for its position being richly accommodated with the bay on both sides, and severall faire navigable rivers and creeks, &c.; and my reason for so great a quantity was not out a covetuous humor, but only that I might reach the lake of Cannada, for the conveniency of an inlett to my province, to which they gave theire opinion, that I should be answered to that by having a passage in this bay, but if the Lord Baltemore will stand to and abide by the literall sense of his pattent, then I think we must lay aside the king's letter untill we shall have first considered the grants and reasons of our pattents. If the Lord Baltemore will take thirty-seaven-and-halfe degrees for thirty-eight, and soo runn on to forty, being half a degree difference, I think it is considerable, and had I covetted to have taken my commencement from Watkins point, as the Lord Baltimore is allowed, I had possibly gained more considerably, but confident that he wol'd not endeavor to deprive me of anything that might conduce to my benefitt without any great prejudice to himselfe, I was contented to begin where the Lord Baltimore ended, being firmly and stedfastly resolved to approve myselfe his good neighbor, and give him the right hand of fellowshipp, and it shall be the Lord Baltemore's fault and not mine, if there be not as faire and amicable correspondence between the two provinces as between any united provinces whatsoever, but if his majesties l're must be waived, we must proceed moderately to argue the grounds and reasons of our patents and waite the king's leisure for a further interpretation of his grant to me.

L'd B. It was never my intentions, nor indeed in my thoughts, to deprive Mr. Pen of anything that might conduce to his benefit soo as the same may not tend greatly to my prejudice, and what Mr. Pen meanes by a comencem't from Watkins point, I understand not but sure I am that had his pattent given him his comencem't anywhere to the southward of the fortieth degree of northern latitude he had de-

prived me of so much of my right which yet I believe Mr. Pen never desired nor covetted. But Mr. Pen you seeme a little unkind in having proposed any deniall of mine to what you offered. And for any kindness you may reasonably expect from me I think it not soe well timed, let but the line be first layd out thereby to ascertaine to each of us his propper and just bounds, and then lett it be seen whether I shall deny Mr. Pen any neighborly kindness within my power.

W. P. The king, it's true, did command the laying out the line betweene us, but if for a more ready way of accomodacon to us both he hath thought fitt to make other proposals, I cannot tell why they may not be taken into consideracon, but I shall concede and waive that letter wholy making this further offer—the capes for several years have been reputed to lye in the latitude of thirty-seaven or between thirty-seaven degrees and five minutes or thereabouts, and hath been so generally taken and approved on by all persons for some considerable space of years, and by which calculation all shipps and vessells have proceeded on their voyages before such time as either interest or prejudice could sway them on the one side or the other, for then if the Lord Baltemore please to take his commence't from the capes, which has been generally and of so long continuance reputed to lye in thirty-seaven degrees and five minutes, and from thence measure by line two degrees fifty-five minutes will next reach to the fortieth degree.

Ld. B. My pattent gives me the forteth degree of Northern latitude for my Northern bounds, and there is noo way soo certaine to find that as by an observation to be taken by a sixtant of six or seaven foote radius, and such an instrum't you have belonging to Col. Lewis Morris, of New York, besides your comencem't by your pattent is given at the fortieth degree of Northern latitude.

W. P. When I shall only say we will wave and wholly lay aside the King's ire at this time, if the Lord Baltimore will begin at thirty-seaven and halfe insted of thirty-eight, he will then indeed have more than was designed for him. I therefore offer as a medium between us the more easily to accommodate this matter, lett the Lord Baltimore first begin at the antient and generally reputed and known place of thirty-seven degrees and five minutes, and thence with a direct line to forty. What falls then within his bounds, much good may it do him. I am contented, and doubt not but he is so worthy and soe much a gentleman as not to endeavor to deprive me of anything shall appeare to be w'thin my grant. This I say I offer onely to lett the Baltimore

know that, altho I am sensible the king's letter is grounded upon strong presumption and strong circumstance, yet I am willing to waive that and accomodate the business between us a more equal way, as I conceive, vis: To comence at the comon generall and so long reputed known place, before either the Lord Baltimore or my selfe would challenge any interest in these parts of the world.

Ld. B. It is other discourse that I expected to have heard from you at this time, and well hoped I should have bin soe farr favored by you as to have received some small advice from you before you had soe farr proceeded upon that part of the countrey which has bin allwayes reputed and known to be justly claimed by me, but to wave that I desire to be informed by you whether you have purchased the duke's pretentions to Delaware.

W. P. Upon terms of the moiety of halfe the revenues thereof to be reserved for himselfe. I hold it of his gift; but this leads to other discourse. I would willingly proceed first to the ascertaining the bounds between us.

Ld. B. The certaine bounds betwixt us must be the fortieth degree of Northern latitude, as I have already shown you by my grant.

W. P. And to find out that, I purpose, in my judgm't, the most equall way that can be, which is to begin at the capes, a place soe generally and soe long known and reputed to lye within the latitude of thirty-seaven and five minutes, and has not for the space of soe many years bin known to vary foure or five minutes by any observation yet taken, and soe from thence to measure two degrees, fifty-five minutes, which will just make the fortieth degree.

Ld. B. My Southern bounds being Watkins point was so determined by commissioners from his majesty and others from my father. Now had they sett out Watkins point higher up the bay my father must have bin contented therewith, and the Northern bounds being the fortieth degree of Norther latitude beyond w'ch I am not to runn.

W. P. Possibly the Lord Baltimore's Southern bounds might be layed out by commissioners, who may be could, or did not, see what they did. The uncertainty of an observation, I apprehend and conceive, is dangerous to confide in, for by the shakeing of a hand, the error in the instrument, or the unskillfullness of ignorance of the observator, great inconveniences may occur to the prejudice of either side; but I doe offer as the most equal way between us to pitch upon. The soe long reputed and generally known and received place of thirty-seaven degrees, odd minuts, w'ch for the space of forty, fifty or sixty

years has bin concluded the latitude of the capes (speaking now of antiquity and before even the Lord Baltimore or myselfe were ever concerned in these parts), and from thence to measure by line till we arrive to forty; which I conceive farr more safe than to trust to ignorance of an observator, the shaking of his hand, or a bad instrument.

Ld. B. A more certaine observation of the fortieth degree may be now taken at the head of the bay. Then formerly there was of thirty-seaven and halfe where you say the capes lyes; and I apprehend it to be more safe and sure for us both to have an observation taken in the proper place, with such an instrument as I have already spoke of; and surely Mr. Pen you will as well confide in your friends as I shall on such as I shall appoint to joine with them. Now, for your owne satisfaction, the course you have proposed may be pursued, but that which I shall depende on, and be wholly determined by, is a due observation to be taken of the fortieth degree being the Northern bounds of my pattent.

W. P. I do not object against the Lord Baltimore's bounds, but I say to find out w'ch, I think a case wherein a man ought to be as cautious as in the choice of a wife, well to consider before hand I propose the most equal way between us both to take our comencement from a certaine general reputed taken and received place of latitude of soo many years standing, described by all mapps, and by which all masters of shipps and vessells have been governed, and so from thence proceed distinctly to measure to forty, soe to remain to posterity, in order to the wavering any future disputes or differences, wch is all the favor I request.

Ld. B. Since you owne the case to be soe tender as truely I doe, I think there will therefore be the greater reason to have our business determined the best and surest way, w'ch I have already offered; tho', for your satisfaction, Mr. Pen, I shall not refuse the liberty to any person to doe that w'ch you propose, and make report to you that which I am not resolved to trust to and be concluded by is an observation to be taken with an instrument of six or seaven foote diameter for the sun will deceive neither of us.

W. P. I acknowledge that as favor from the Lord Baltimore, but still I moove the most equall way, in my opinion, of ascertaining the bounds between us.

Ld. B. Mr. Pen, you did, I remember, once propose to me, in England, that you had offers made you of that part of Delaware from his royal highness which I lay claime to, but you would not, as you then

said, accept thereof, because you knew it was mine. The same I heire you have now possessed yourself of. I only desire to know upon what you claime.

W. P. If the Lord Baltimore please, I desire we may first conclude our former discourse, and then I shall shew myselfe most willing and ready to give you all satisfaction I can on that point.

Ld. B. I am willing and have always bin ready to conclude the business of the bounds according as my pattent directs me.

W. P. I conceive that where there is a certaine degree allowed of and generally received for the space of so many years, to comence there and so proceed by measure to the fortieth degree is the most equall way can be proposed, and am willing to be concluded thereby, and hope the Lord Baltimore may not be opposite to it, and if that which is not the hundredth part of my Lord Baltimore's interest may be ninety-nine parts of the hundred of mine; nay, possibly, sine qua non that upon which the rest wholly depends. The Lord Baltimore, I request, will not place my eagerness therein to the account of my disrespect, but of my interest and honest endeavors to hold a faire and amicable correspondence with him; for that I cannot imagine that fifty or sixty years experience and generall concurrence in opinion could have any designe of favor or prejudice, either to the Lord Baltimore or myself.

L'd B. The latitude of the capes was taken by a sea quadrant, which by noe artist will be held soe exact and certaine as an instrument of six, eight or ten foote diameter; and with such an instrument I desire the degree of forty taken.

W. P. I doe not apprehend that a sea quadrant can have any prejudice for the Lord Baltimore more than for William Pen.

L'd B. I say that it was more uncertain; the observation formerly taken at the capes by a sea quadrant, then an observation now to be taken of the fortieth degree of northern latitude with such a fisch land instrument as I have already made mention of can be.

W. P. You say true, the taking of thirty-seven then may be as uncertain as the taking of forty now; but I say an uncertainty of soe long standing and so generally received and approved of by all persons, when neither the instrument nor observation could be imagined to have any design of interest or prejudice for either of us, is safer to depend on than to runn into new errors; and then if it fall within my Lord Baltimore's bounds, I hope he will be kind to me; and if within mine, I shall approve myselfe as kind to the Lord Baltimore as I intended.

L'd B. The way that propose, should I yield, would be but error upon error; therefore let our bounds be ascertained as I have offered; then possibly I may have an opportunity of shewing my kindness to Mr. Pen, and till that be done neither he nor I can approve ourselves as we both desire.

W. P. I have, I think, proposed the most equitable way to that end, but suppose the capes to lye within the latitude of thirty-seven and this part of the country in thirty-six degrees and thirty minutes, which is halfe a degree difference What will then follow but to set the sea and land together by the eares? But waiving disputes of that natures, I am contented to take our commencement from the long generally taken and reputed place of thirty-seven degrees and five minutes, and thence to runn to forty, which I apprehend the most faire and equall way, and am thereby willing to be concluded.

L'd B. Would it not seem very strange and preposterous in England for me to proceed upon a bare suggestion or supposition of an observation of thirty-seven taken at the capes, and that by masters of ships with theire small quadrants, to find out the degree of forty.

W. P. Lett the Lord Baltimore pitch upon one, and I another, to goe and take theire observation at the capes, and from thence calculate where Watkins point lyes (which will not cost above five or six days' expense), and from thence proceed to find out the degree of forty, by which, as I have soe often reiterated, I am willing to be concluded. As for the land in dispute, I value it not but barely for an inlett for the conveniency of my province.

L'd B. It is not to deprive Mr. Pen of an inlett to his province, but my interest, which makes me argue thus much; for should I consent to take that for my bounds which in truth is not, would be a meanes to destroy the very foundation of my patent, which you cannot blame me if I be not soe forward to doe.

W. P. If the Lord Baltemore would vouchsafe to discourse with me a word or two in private, I should possibly open myselfe more fully and freely in this point, and franckly acquaint him what I would request of him, and whether the head of the bay fall within his or my bounds we should, I doubt not, make all things comodious between us; for which reason I would crave a little private discourse with the Lord Baltemore.

L'd B. I hope I have not offered anything injurious to Mr. Pen, onely am desirous to preserve my own interest, to which end I desire that two able men may be made choice of to find out the degree of

forty, whereby I am bounded by my patent to the Northward. Here is Capt'n Connaway, a good, discreete, able man, lett him be one before he goes out.

W. P. Capt'n Connaway, its true, is a knowing person, but before we goe further I am desirous to purge him of some aspersions have been cast on him that he should have advised me, I doe declare that I never had any advice from him in this particular, neither indeed did I, to my knowledge, ever see him before such time as I had my pattent granted me.

Ld. B. What has been said of Capt'n Connaway I know not, but whatever he hath said or don I doe assure you never tooke any impression upon me, but that some misreports have been made the mapps and draughts which have ben sett forth sufficiently evince.

W. P. Upon the view of the mapp of Maryland some persons taking the meetes as the same lay displayed, found that the author had either much abused the Lord Baltemore in the wrong calculation or else allowed him more land then indeed was intended for him, and accordingly some draughts have bin made.

Ld. B. My pattent gives me, as you and all here present know, the fortieth degree of Northern latitude and the same with such an instrument as I have mentioned will soone satisfie us where that is for thither my pattent guids me.

W. P. Then thus in short I have here produced the king's letter in answer to which the Lord Baltemore sayeth that he will rather abide by his pattent which is under the great seale then to the bare contents of a letter.

Ld. B. Mr. Pen were it your case would you not stick to a pattent so plaine as mine is?

W. P. I doe not blame the Lord Baltemore, it may be I should doe the same as he does, I have consented to wave that, and for the more equal accomodation between us I have proposed that for the ascertaining the bounds between us let us begin and take our comencem't from the capes soe antiently and generally knowne and reputed to lye within thirty-seven degrees and five minuts, and thence proceed till we come to forty which binds the Lord Baltimore to the Northward, and from whence I must begin to that the Lord Baltemore doth reply that true he is bounded by the fortieth degree to the Northward, and the most exact way to find that out is, by an observation taken with a land instrument in answer to which I have returned that I conceive that to be a uncertain way for the reasons I

have so often urged and say lett some persons be jointly commissionated between us to take observation at the capes and report how much it varies from the antient generally reputed and received opinion and then proceed to find the latitude of Watkins point, and from thence by an exact line measure out to the degree of forty to that end if the Lord Baltemore please to select four or five persons to be jointly impowered betweeen us so unanimously to proceed without jarring which will consequently arise upon different parties.

Ld. B. That may be don for your private satisfaction by any persons that may make theire report to you.

W. P. I doe propose and request that we may accommodate the business betweene ourselves.

Ld. B. I onely first premise that an observation be duely taken to answer the king's comands.

W. P. I question not but if the Lord Baltemore vouchsafe to discourse the business in private with me we should fairely accomodate all matters.

The foregoing is to our certaine knowledge the sum and substance of what materially was argued and spoken by the Right Hon'ble Charles Lord Baltemore and Wm. Pen, the day and place aforesaid which hath been read to and approved by—

PHILIP CALVERT,
THOMAS TAILLER,
HENRY COURSEY,
HENRY DARNALL,
WM. DIGGES,
WILL STEVENS.

A true copy examined by me.

C. BALTEMORE.

Lett my cosen, Mr. John Darnall, the lawyer, and my kinsman, Mr Matthew Merriton, have the pernsall of this as also of the narrative sent herewith to you by

Your friend,

C. BALTEMORE.

Endorsed :

MARYLAND, 13th Dec'r, 1682.

A conference between Ld. Baltimore and Mr. Pen touching their boundaries.

LETTER FROM LORD BALTIMORE.

No. 119.

PATUXENT, 11th June, 1683.

My Honored Friend :

I most thankfully acknowledge the favour of your last letter of the 9th of February, which came to my hands by Capt. Joseph Eaton, commander of the shipp Merchants Delight. It was with great satisfaction that I read your obligeing expressions therein, and noo little comfort to me also your assurance that the Lords of the committee were pleased with my proceedings and management of affaires of my provinces. I assure you, and (if you please) you may in my behalfe assure theire Lapps, that it shall be my endeavor, as it is my great ambition, to deserve the continuance of theire good opinion of me, and their kind approbation of my actions here, without which, and the grace and favor of my Sovereigne, I take noo content and satisfaction in anything of an estate in this place or any other part of the world. Haveing given this assurance as the truth of my part, I will now only add, that having lately had the long-desired second conference with my neighbor, Mr. William Penn, I send you the same in writeing, being the enclosed paper, which I have signed, and will justifie to be the sume and substance of what was argued, spoken and debated at New Castle on Delaware river, Tuesday, the 29th of May last, by the said Pen and my selfe. The favor that I will now beg of you is this, that if Mr. Penn should move for any further order and comands in reference to the bounds of the two provinces, you will please, in my behalfe, to request I may have time to be heard in person, and (God willing) I will, Aprill next, most assuredly, embarque for England, in order to make my just defence, and

also that I may there be heard to make out my just claime to those parts on Delaware bay an river within the degree of forty Northerly latitude, which the said Penn pretends now to hold by writeings from his Royal Highness, the Duke of York. Good sr., move this in favor of

Your most affectionate friend,
And humble servant,

C. BALTEMORE.

SUBSTANCE OF ARGUMENT

BETWEEN

LORD BALTIMORE AND WILLIAM PENN.

[Coppy.]

The sume and substance of what was argued and spoken by Charles Lord Baltemore and William Penn, Esq'r, at theire private conference, at New Castle, on Delaware river, Tuesday, the 29th of May, 1683:

Mr. Penn haveing by his letter of the 23d of April last, desired that I would lett him know where in some neere part of my province he might meete me, and that with what speed my affaires would permit, I wrote him word that I would begin my voyage up the bay about the middle of May, which accordingly I did, and being arrived at Sasafras river Wednesday, the 23d of the said month, I dispatcht from thence Mr. John Darnall, one of my chief secretaries, with a letter to Mr. Penn, signifieing my arriveall at that part of my province, and Tuesday following being the 29th of the same month, I mett Mr. Penn about eight miles short of New Castle, to which place that day I came in company with the said Penn. In the evening, the same day, I desired to know of Mr. Penn what proposals he had to make, signefieing that I was come thither to see what friendly issue might be put to the business of our bounds, to which he answered, that tho' he tho' his majesties letter of the 29th of August (82) was

not to be insisted on by him as to the two degrees mentioned therein, he con there was yet an admeasurement to be insisted on still that seeming very strange to me both in regard that Mr. Penn had (at a conference afore) consented to waive that letter, as also in regard that it was not agreeable to my pattent, he tooke some paines (and not without some heat) to let me understand what he meant by another admeasurement, which he said must still be insisted on, being thus that as my Northern bounds was the fortieth degree of Northern latitude, he did not doubt but to have that ascertained by an admeasurement in this manner that there should be an observation first taken at Watkins point, and according to the latitude that that place by an observation should be found to lye in, that from thence there should be an admeasurement to the degree of forty, saying that out of every degree he did not doubt but to gaine six or seven miles, and by that meanes to gett water at the head of Chesapeake bay, and that this was the mistery which he was plaine to tell the Lord Baltemore, and did assure me that he would procure it from his Maj'tie, to which I answered, that if he could impose his dictates upon the king and council, it would be in vaine for me to hope to have justice don me. But I was not (as I told him) of opinion that he could impose in that kind, and since he discourst of having an observation taken at Watkins point (my South bounds) in order to such an admeasurement as he last proposed to himself, I did not see any reason why my North bounds might not also be ascertained by an observation, and then demanded of him how he resolved to have the Northern bounds of his province (being the 43rd degree of Northern latitude) settled and fixed, and he answered me by an observation, to which I againe replyed, that he did not then approve of an admeasurement for his three degrees, tho' he thought it necessary in my case, and yet I said to him that there was more reason for admeasurement as to his bounds (there being severall degrees mentioned in his grant) then in mine, where I had nothing given me by any number of degrees but only Watkins point for my South bounds and the degree of forty for my North bounds, besides than an admeasurement in my case might be laid not to be rationally practicable, as will easily be made appeared (this having been argued with some earnestness.) Mr. Penne (at last) told me that if I would hearken to and accept of a proposall which he had to make me, he did not doubt but all matters would soone receive a friendly issue. I told him I was desirous of nothing more than that our differences might be amicably ended

betwixt us. He then proposed this, that if I would let him have Susquehanna river for an inlett, and land enough on each side the said river sufficient for his occasions, and that I would let him know certainely under my hand what price or value I would set upon the same, he would then willingly join with me in taking an observation to finde the degree of forty Northerly latitude, and with such instruments as we had then proper for that purpose. To this I answered that I wondered should I be willing to dispose of that which he desired, how he could expect I was able to give him anything certain under my hand, afore I knew certainly how far North up Susquehanna river the fortieth degree Northern latitude (my North bounds) would reach. He then desired to know what latitude Capt'n James Conaway and some other persons found Palmers island, which is in Susquehanna river, to lye in by an observation I had caused to be taken, the 28th of February last. For his satisfaction therein I produced to him the observation under theire hands, and the same read to him, by which he said that the said island was sixteen miles to the southward of the degree forty; and then he told me that by an observation he thought New Castle was about twelve miles from the said degree, and then proposes to me that if I would give him from under my — what he must give for as many miles as I should runn up the said river, saying if tenn miles, how much I would demand for tenn miles; and if sixteen miles, how much for 16 miles, and that after I had given him this certaine under my hand, he would then be willing to go with me to the heads of the river and joine with me in the taking observations, as I had all along insisted on adding that we should take but a few persons with us, and not have the noise and trouble of any troopes of horse. As this proposall was new, and a very strange way of proceeding, as I thought, I desired some time to consider of what he had offered, but I found he was not willing to give me any longer time than the next day, being the 30th of May, so that I took that little time to consider of his proposals, and made him some other offers, which he thought not good to yield to; after which we parted, and this is the sum and substance, nay (I may almost say) the very words that were spoken on both sides. But that it is the substance of what was (at that time) argued and spoken by Mr. Penn and me, I will make oath when required, and I doubt not but Mr. Penn will own as much when we meet at the Council Board.

C. BALTIMORE.

This 31st May, 1683.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

LETTER FROM THE KING TO LORD BALTIMORE.

No. 117.

State Papers—Colonial Entry Book—Vol. 52, p. 88-9. August 19th, 1682.

Right trusty and well beloved,—We greet you well. Whereas by our letters patent bearing date the 4th day of March, 1680, we have been graciously pleased, out of our royall bounty and the singular regard we have to the merits and services of Sir William Penn, deceased, to give and grant to our trusty and well-beloved subject, William Penn, Esq., son and heir to the said S'r William Penn, a certain tract of land in America, by the name of Pennsylvania. And inasmuch as the same, according to the bounds thereof, expressed in our said letters patents, borders on Maryland, we think it will very much conduce, as well to our service and the improvement and melioration of the said colonies, as to the benefit of the particular planters in both, that the boundaries in both of them be set forth and ascertained, which cannot by any method be so certainly effected as by an admeasurement of the two degrees North from Watkins point, the express South bounds in your patent, and already settled by commissioners between Virginia and Maryland. And being willing to give the said William Penn all fitting encouragement in planting the said province, for preventing all disputes which may disturb an amicable and neighborly correspondence between you two and our subjects under yo'r respective commands, wee have thought fit hereby to recommend the same in a most particular manner to you, willing and requiring you that with all possible speed, upon the receipt hereof, you proceed to determine the Northern bounds of your provinces, as the same borders

on Pensilvania, by an admeasurement of the two degrees granted in your patent, according to the usuall computation of sixty English miles to a degree, beginning from the South bounds of Maryland, according as the same are already settled by commiss'nrs as is above mentioned, that so our subjects transporting themselves into Pensilvania may receive no discouragement by loss of time to the prejudice of our service and their concernes. And so wee bid you heartily farewell.

Given at our court Windsor, the 19th day of August, 1682, in the four and thirtieth year of our reign.

By his mat's command,

CONWAY.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONUGH,
Record Agent.

July 14th, 1871.

S. P. O.
Colo. Vol. 6, No. 77. } Orders.

Att the Starr Chamber, the third of July, 1633.

Present—Lord Keeper, Earle of Danby; Lord Privy Seale, Lord Viscount Wentworth; Lord High Chamberlain, Lord Viscount Faulkland; Earl of Dorsch, Lord Cottington; Earl of Bridgwater, Mr. Secretary Windebauck.

Whereas an humble petition of the planters in Virginia was presented to her Majestie, in which they remonstrat that some grants have lately been obtained of a great proportion of lands and territorys within the limits of the colony there being the places of their traffick, and so near to their habitations as will give a generall disheartning to the planters if they be divided into severall governments, and a barr

to that trade which they have long since exercised towards their supportation and relief under the confidence of his majesties royall and gracious intentions towards them, as by the said petition more largely appeareth ; forasmuch as his majesty was pleased on the 12th of May last to referr to the board the consideration of this petition, that upon the advice and report of their lordships such orders might be taken as to his majesty's wisdom should seem best. It was thereupon ordered on the 4th of June last that the businesse should be heard the second Friday in this terme, which was the 28th of the last month, and that all parties interessed should then attend, which was accordingly performed, and their lordships having heard the cause, did then order that the Lord Baltemore being one of the partys, and the adventuress and planters of Virginia aforesaid, should meet together between that time and this day and accommodate their controversy in a friendly manner, if it might be, and likewise set downe in writing the propositions made by either party with their severall answers and reasons, to be presented to the board this day, which was likewise accordingly done. Now their lordships having heard and maturely considered the said propositions, answers and reasons, and whatsoever else was alleaged on either part, did think fit to leave the Lord Baltimore to his patent, and the other partys to the course of law according to their desire. But for the preventing of further questions and differences, their lordships did also think fit and order that things standing as they do, the planters on either side shall have free traffick and commerce each with other, and that neither part shall receive any fugitive persons belonging to the other, nor do any act which may draw a warr from the natives upon either of them, and lastly, that they shall sincerely entertain all good correspondence and assist each other on all occasions in such manner as becometh fellow subjects and members of the same State.

LETTER FROM LORD BALTIMORE TO THE KING.

No. 13.

State Papers—Colonial—Vol. 5, No. 27.

August 19, 1629.

Most gracious and dread Soveraigne:

Small benefits and favors can speake and give thanks, but such as are high, invalerable, cause astonishment and silence. I am obliged unto yo'r ma'ty for the latter in such a measure. As reflecting upon my weakness and want of merit, I know not what to say. God Almighty knowes, who is the searcher of hearts, how myne earnes to sacrifice myself for yo'r ma'ty's service. Yf I do but know how to employ my endeavors worthy of that greate goodnets and benignity, which your ma'ty is pleased to extend towards me upon all occasions, not only by reaching yo'r gracious and royall hand to my assistance in lending me a faire shipp (for w'ch upon my knees I render yo'r ma'ty most humble thankes), but by protecting me also against caumny and malice, w'ch hath already sought to make me seeme fowle in yo'r ma't's eyes. Whereas I am so much the more confident of God's blessing upon my labor in these plantations (notwithstanding the many crosses and disasters I have found hitherto), in that a prince so eminently virtuous hath vouchsafed to take it into the armes of his protection; and that those who go about to supplant and destroy me, are persons notoriously lewd and wicked. Such a one is that audacious man, who being banished the colony for his misdeedes, did the last wynter (as I understand) raise a false and slanderous report of me at Plymmouth, w'ch comming from thence to yo'r ma'ty's knowledge, you were pleased to referre to some of my lords of the councell, by whose hon'ble hands (for avoyding the ill manners of drawing this letter to too much length) I have presumed to returne my just and appologie to yo'r ma'ty.

But as those rubbs have been layd to stumble me there (w'ch discourage me not, because I am confident of yo'r ma'ty's singular judgment and justice); so have I mett with greave difficultyes and incumbrances here, w'ch in this place are no longer to be resisted, but enforce me presently to quitt my residence and to shift to some other warmer climate of this new world, where the wynter be shorter and lesse rigourous. For here yo'r ma'ty may please to understand that I have found by two deare bought experience, w'ch other men for their private interests always concealed from me, that from the middlest of October to the middlest of May there is a sadd fare of wynter upon all this land; both sea and land so frozen for the greater part of the tyme, as they are not penetrable, no plant or vegetable thing appearing out of the earth, untill it be about the beginning of May, nor fish in the sea, besides the ayre so intolerable cold, as it is hardly to be endured. By meanes whereof, and of much salt meate, my house hath beene an hospitall all this wynter of 100 persons, 50 sick at a time, myselfe being one; and nyne or ten of them dyed. Hereupon I have had strong temptations to leave all proceedings in plantations, and being much decayed in my strength, to retire myselfe to my former quiett; but my inclination carrying me naturally to these kynd of workes, and not knowing how better to emply the poore remaynder of my dayes, than, with other good subjects, to further, the best I may, the enlarging yo'r ma'ty's empire in this part of the world. I am determined to committ this place to fishermen that are able to encounter stormes and hard weather, and to remove myselfe with some 40 persons to yo'r ma'ty's dominion Virginia; where, if yo'r ma'ty will please to grant me a precinct of land w'th such privileges as the k. yo'r father, my gracious ma'ty, was pleased to grant me here, I shall endeavor, to the utmost of my power, to deserve it and pray for yo'r ma'ty's long and happy raigne, as

Your ma'ty's most humble and faithful subject and servant,

GEO. BALTIMORE.

Foryland, 19 August, 1629.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 14.

State Papers—Colonial—Vol. 5, No. 39.

Signed Charles R.

Right trustie and well beloved, we greete you well. Such is and ever hath been the estimation we make of the persons of our loving subjects who employ themselves in publick actions that tend to the good and glorie of their countrie, and the advancem't of our service, as we cannot but take notice of them, though of the meanest condition; but much more of a person of yo'r qualitie, who have been so neare a servant to our late deare father of blessed memorie. And seeing your plantation in Newfoundland (as we understand by yo'r letters) hath not answered your expectation, which we are informed you take so much to heart (having therein spent a great part of yo'r meanes) as that you are now in pursute of new countries. We, out of our princely care of you, well weighing that men of yo'r condition and breeding are fitter for other employments than the framing of new plantations, which commonly have rugged and laborious beginnings, and require much greater meanes in managing them than usually the power of one private subject can reach unto, have thought fit hereby to advise you to desist from further prosecting yo'r dessigns that way, and with your first conveniency to returne backe to yo'r native countrie, where you shall be sure to enjoye both the libertie of a subject and such respect from us as yo'r former services and late endeavors doe justly deserve.

Given at o'r pallace of Whitehall, this 22nd of Novemb'r, in the 5th yeare of our raigne.

Endorsed:

Copie of his matie's letters to the L'd Baltimore, as (two equall copies) were brought to the L'd Viscount Dorchester by the Earle *Marshall* and the l'd president of the North, and by my lord sealed with the signet, the day of the date 22 of November, '29.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 1, 1871.

S. P. O. Colonial, No. 5, *endorsed* demands w'th reasons for 2 degr. of Mr. Alloarmy grat.

10TH FEB'RY, 1629.

1. 2 degr. are demanded, because an association is presently intended for a great sum of money to commence this year, w'th a great number of men to people ye same and to fortifie and furnishe themselves w'th all provisions, munitions and armes or commodities, yt shall subsist of yourselves for ye futture and yearly multiply in their numbers of men to be transported to ye first colonie. And the principall undertakers being men of qualitie and good means, desire ye s'd 2 degrees upon conditions following:

2. The donation therof be made unto A and B in proprietie, w'th charge to hold of ye lord predominant under his Ma'ty ye soveraigne, paying haff a mark of gold for a relief.

3. That ye s'd A and B shall have power to creat and establishe, or confirme, for ever, officers, ministers and agents of all qualities and conditions, touching as well ye church as ye military and politicall part of gover'm't, according to ye grall orders and lawes of ye whole province; paying and causing to be payd to these officers, ministers and agents all their entertainm'ts and wages, what charge or expense in any kinde unto ye se, Sr. Robt. Heath.

4. That ye s'd A and B shall cause to payed by the fermers ord'rie of ye Lords rights and duties ye half of all ye s'd rights and duties of all kinds whatsoever, all well of all mins, mineralls and salts and of all fruits and issues and profits, arising out of ye labour and works of ye inhabitants of ye s'd 2 degrees. The other half of the premises being left and apperteyning unto ye s'd A and B to be received of ye said fermes, that is to say ye twentyth part of all mines, mineralls and salt, and ye fortieth part of all fruits, profits and issues arising out of ye earth w'th ye s'd 2 degrees.

Motives in behalf of A and B.

That is impossible for A and B to raise other profits or favor out of ye s'd 2 degr., forasmuch as it is a willbe bootles unto them, as also ye Lord paramount to have ye s'd lands lye untilled, &c.; and yt the people who shall labour and till ye s'd lands will not paye above a tenth for ye mines and a tenth of ye salt w'th a twentieth part of ye profits of ye earth, w'ch tenths and twentieths are entierly all ye

rights and duties can be pretended upon ye s'd 2 degr., and therefor it is just and reasonable, yt they yt shall be of good conditions and disburse so much moneys, shall have ye same in half, who otherwise should have nothing, and this is ye least favour can be granted unto those who shall forthwith so largely people any new plantation.

2. To grant lands unto any particulars is to ruine their plantations beforehand, and so to forstall and confounde ye work yt never any large, lasting and multiplying plantation can be raised, *tho'* spc. by reason nothing of this nature can be effected but by ye principall undertaker to give ye same order and union to all, and have as well adventure as hand in the common work.

3. The pr'll undertakers will be at very great charge to build fortifications, paye such men, sold'rs and all other P. officers to build howses fitting and strong ; to trans. all sort of cattail and poultery, as also beasts of service, w'ch is easily to be observed by the planters, &c., in Virginia, and the successe therof.

4. That ye Lord *president* shall be, and his means bee from all publicy : charges and expences w'h soever of gover'm't, &c.

These A and B make appeare their good affection by offering y'h after 3 yeare 1,000 lb., and after ye fifth year 2,000 lb., out of ye whiche province for ye * * * * * forasmuch as if they cannot effect the same they will discharge ye Lord of all his contract, and so leave him likely to dispose of his lands againe unto all or any other, as he shall have or see occasion for his better profit, loging or advantage.

No. 15.

State papers—Colonial—Vol. 5, No. 40.

Nov. 30th, 1629.

Right Hon'ble :

May it please yo'r lordhps to understand that about the beginninge of October last, there arrived in this colony, the Lord Baltimore from his plantation in Newfoundland, w'th an intention, as wee are informed, rather to plant himself to the Southward then settle here, although since he hath seemed well affected to this place, and willing to make his residence therein, w'th his whole family. We were readyly inclined to render unto his lordsh'p all those respects

w'ch were due unto the honor of his person or w'ch might testifie w'th how much gladness we desired to receive and entertain him, as being of that eminence and degree; whose presence and affection might give greate advancem'ts to this plantation. Whereupon according to the instructions from yo'r lord'h'pps, and the usual course held in this place, wee tendered the oaths of supremaire and aleidgeance to his lordsh'p, and some of his followers, who making profession of the Romishe religion, utterly refused to take the same, a thing w'ch we could not have doubted in him, whose former employm'ts under his late ma'ty, might have indeared to us a *privation*, he would not have made deny all of that in poynt, whereof consisteth the legaltie and fidelitie w'ch evry true subject oweth unto his soveraigne. His lord'hp then offered to take this oath, a copy whereof is included, but in true discharge of the trust imposed in us by his ma'tie, wee could not imagine that soe much latitude was left for us to decline from the prescribed forme, so strictly exacted and soe well justified and defended by the pen of our late soveraigne, Lord King James, of happy memory. And among the many blessinges and favors for w'ch wee are bound to blesse God, and w'ch the colony has received from his most gratious ma'tie, there is none whereby it hath beene made more happy than in the freedome of our religion, w'ch wee have enjoyed, and that no Papists have beene suffered to settle *their* abroad amongst us. The continuance whereof wee most humbly implore from his most sacred ma'tie, and earnestly beseech yo'r lord'hps that by your mediations and councells the same may be established, and confirmed unto us. And wee as our duety is w'th the whole colony, shall always pray for his ma'ties long life and eternall felicity, from whose royall hands this plantation must expect her establishment, and for whose honor God hath reserved so glorious a worke as the p'fection thereof. Wee humbly take our leaves.

Yo'r lord'shp's very humble serv'ts,

SAM. MATHEWE,
JOHN POTT,
ROGER SMYTH,
W. CLAYBOURNE.

The 30th November, 1629.

(Addressed) To the right ho'ble the lords of his ma'ties most ho'ble pryvy councell.

(Endorsed) From Virginia, 30th Nov'r, 1629.

I certify that the above is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 3d, 1871.

Instructions of the King to Lord Culpeper.

8th. You shall administer the oaths of allegiance and supremacy to the members and officers of the council and assembly, all judges and justices, and all other p'sons that hold any office in the s'd colony by vertue of any patent under our great seal of Engl'd or ye publick seal of Virg'a; and you are to p'mit a liberty of conscience to all other p'sons (except Papist), soe they be contented with a quiet and peaceable enjoyment of it, not giving offence or scandal to the government.

Answer.

All officers whatsoever, both civill and military, have constantly taken the oaths of allegiance and supremacy, according to the first part of this instruction; and in pursuance of the latter part I have stoppe l execution given against one John Plaesants, a quaker, indited in Henrico county uppon the statute of twenty pounds p'r month for not coming to church, and for goeing to a conventicle untill his matie's pleasure should be known therein, the said Plaesants having carryed himself peaceably and quietly, and having never given offence to the gouvernment.

COPIED FROM THE BRITISH ARCHIVES.

State Papers, Colonial—Vol 5, No. 27.

LORD BALTIMORE'S CASE UN-CASED.

Chapter 143.—"The Lord Baltimore's Case" Concerning the province of Maryland, adjoining to Virginia, in America: with full and clear answers to all material objections, touching his rights, jurisdiction, and proceedings there, and certaine reasons of state why the Parliament should not impeach the same; unto which is also annexed a true copy of a commission from the late king's eldest son to Mr. William Davenant, to dispossess the Lord Baltimore of the said province, because of his adherence to this common-wealth. London: Printed in the yeare 1653.

The Lord Baltimore's Case.

Concerning the province of Maryland, adjoining Virginia, in America, &c.

In 1632, the Lord Baltimore had a patent granted to him, and his heirs, of the said province of Maryland, with divers privileges and jurisdictions for the government thereof; the better to encourage him to settle a colony of English there, whereby to prevent the Dutch and Swedes from incroaching any nearer to Virginia, Maryland being between Virginia and the Dutch and Swedes plantation on that continent, and New England beyond them to the Northward.

The Lord Baltimore hereupon, in 1633, sent two of his own brothers with above 200 people, to begin and seat a plantation there, wherein and in the prosecution of the said plantation ever since hee and his friends have disbursed above £40,000, whereof £20,000, at least, was

out of his own purse. And his said two brothers died there in the prosecutions thereof.

In Septem. 1651, when the councell of state sent commissioners from hence, to-wit: Captains Dennis Steg and Captain Curtis, to reduce Virginia to the obedience of the parliament, Maryland was at first inserted in their instructions to be reduced as well as Virginia; but the council being afterwards satisfied that that plantation was never in opposition to the parliament; that Captaine Stone, the Lord Baltemore's deputy then, was generally knowne to have been always zealously affected to the parliament, and that divers of the parliament's friends were by the Lord Baltemore's speciall direction received into Maryland and well treated there, when they were fain to leave Virginia for their good affection to the parliament. Then the councell thought it not fit at all to disturb that plantation, and therefore caused Maryland to be struck out of the said instructions; which was twice done, it being by some mistake or other put in a second time.

In this expedition to Virginia, Captain Dennis and Captain Stegg, the two chief commissioners, were cast away, outward bound, in "the Admirall," of that fleet, which was sent from hence upon that service; and with them the original commission for that service was lost.

But Captain Curtes, having a copy of the said commission and instructions with him in another ship, arrived safe in Virginia, and there being also nominated in the said commission two other persons resident in Virginia, to-wit: Captain Bennet and Capt. Clayborn (known and declared enemies of the Lord Baltemore's), they together with Capt. Curtes proceeded to the reducement of Virginia, which was affected accordingly upon articles, among which one was that the Virginians should enjoy the antient bounds and limits of Virginia, and that they should seek a charter from the parliament to that purpose.

In the reducement of Virginia, Captain Stone (the L'd Baltemore's deputy of Maryland) sent to the commissioners, at the first arrival of the fleet in Virginia, to offer them all the assistance he could, and did actually assist them therein with provision of victuall and other necessaries, as will be testified to (if need be) by Mr. Edward Gibbons, major-generall of New England, and divers others, who were then there and eyewitnesses of it, and are now here.

Notwithstanding which, the said commissioners, after Virginia was reduced, went to Maryland, and upon pretence of a certaine clause (which it seems by some meanes or other was put into their instruc-

tions after Maryland was struck out as aforesaid), to-wit: that they should reduce all the plantations in the bay of the Chesapeake to the obedience of the parliament, and some part of Maryland, where the Lord Baltemore's chief colony there is seated, being within that bay; as well as most of the plantations of Virginia are. They required Capt. Stone and the rest of the Lord Baltemore's officers there, first to take the ingagement, which they all readily subscribed, and declared that they did in all humility submit themselves to the government of the commonwealth of England in chief, under God. Then the commissioners then required them to issue out writs and processe out of the L'd Baltemore's courts there in the name of the keepers of the "Liberty of England," and not in the name of the "Lord Proprietary," as they were wont to doe; wherein they desired to be excused, because they did not conceive the parliament intended to devest the L'd Baltemore of his right there; and that they understood out of England that the councell of state intended not that any alteration should be made in Maryland. That the king's name was never used heretofore in the sayd writs, but that they had always been in the name of the lord proprietary, according to the priviledges of his patent ever since the beginning of that plantation. That the late act in England for changing of the forms of writs, declared only that in such writs and process, wherein the king's name was formerly used, the keepers of the liberty of England should for the future *be used instead thereof.* That the continuing of the writs in the lord proprietary's name was essential to his interest there; and that therefore they could not, without breach of trust, concur to any such alteration. Whereupon the commissioners demanded of Captain Stone, the Lord Baltimore's commission to him, which he delivered, and then without any other cause at all, they removed the said Captain Stone, and the Lord Baltimore's other officers, out of their imployment there under him; and appointed others to manage the government of that plantation till the pleasure of the counsell of State and Parliament, should be further known. Therein seized upon all the records of the place, and sent divers of them hither, into England. All which they did without any opposition at all from Capt. Stone, or any other of Lord Baltimore's officers, in regard of their respect and reverence to the commissioners of Parliament.

The colony of Virginia, not long after, sent one Colonell Mathews hither into England, to get their articles confirmed by the Parliament, which were read in House on the 31st August, 1652. Upon

the reading whereof, a petition of the Lord Baltimore's, and of about twenty more considerable Protestant adventurers and planters, to and in Maryland, who are known by divers members of the House to have bee well affected always to the Parliament, and who signed the said petition, was also read; whereby it was humbly desired that before the House passed that article, concerning the old limits of Virginia, the said petitioners might be heard by their council. In regard, Maryland was long since esteemed part of Virginia, and therefore they were concerned in that article. And they further humbly desired in the sayd petition, that the Lord Baltimore's officers might be restored to their places in Maryland under him; and that the petitioners might quietly enjoy the priviledges of the sayd patent of Maryland; upon confidence whereof, they had adventurned so much of their fortunes thither as aforesaid.

Whereupon divers parchments, under the Lord Baltimore's hand and seale, which were sent out of Maryland by the sayd Bennet and Capt. Clayborn, were at that time produced to the House by a member thereof, who it seems conceived that there would appear something in them whereby the Lord Baltimore had forfeited his sayd patent, or at least, that his authority in Maryland was not fit to be allowed of by the Parliament.

The house, on the 31 August, 1652, referred the sayd article concerning the old limits of Virginia to the committee of the navy, to consider what patent was fit to be granted to the inhabitants of Virginia, and to hear all parties, and consider of their particular claims, and report the same, with their opinions, to the parliament; and the sayd parchments delivered in concerning Maryland, were also referred to the same committee.

The Lord Baltemore accordingly made his claim before the said committee, unto whom he delivered a true copy of his said patent, and desired, therefore, that the patent, which the Virginians were suitors for, might not extend to any part of Maryland, it being made appear to the said committee, that that province had not been for these 20 years last past, accounted any part of Virginia. And that the Virginians had neither possession of any part thereof, at the time of the making of the said articles, nor for 20 years before; nor that the present inhabitants of Virginia had ever at all any right unto it.

Then upon the suggestion of a member of that committee, certain exceptions against the Lord Baltimore's patent, and his proceedings thereupon in Maryland were shortly after presented in writing, to the

said committee, unto which the Lord Baltimore put in his answer also in writing, which was read, and the committee upon debate thereof (it seems) thought not fit to deliver any opinion in the business, but ordered that the whole matter of fact should be stated by a sub-committee, and reported first to the said grand committee, and afterwards to the house.

The exceptions aforesaid were many, but the substance of them are reduceable to these heads following, which are set down by way of objections, with answers to them:

1. Object. A pretended injury done to the Virginians, by the said patent, in regard to Maryland was heretofore part of Virginia.

Answer. The present inhabitants of Virginia had never any right to Maryland, more than to New England, which was part of that country, heretofore called Virginia, as well as Maryland, but distinguished and separated afterwards from it by a patent, as Maryland was. There was, indeed, a patent, heretofore granted by King James, in the 7th yeare of his reigne, of a great part of that, Northern continent of America, which was then called Virginia, to divers lords and gentlemen here in England, who were by that patent erected into a corporation, by the name of a Virginia company, in which tract of land granted to the said company, that country, which is now called Maryland, was included; but that patent was legally evicted by a quoranto in the then king's bench in 21 yeare of the said King James, 8 or 9 years before the patent of Maryland was granted to the L. Baltimore, which company or corporation the inhabitants of Virginia desire not now to revive by vertue of their articles above mentioned, but abhor the memory of it, in regard of the great oppression and slavery they lived in under it, when it was on foot, so as they, never having had any patent right, or possession of the sayd province of Maryland, there could be no injury done to them by the Lord Baltemore's said patent. After the eviction of the sayd Virginia companie's patent thereof. For it was as free in the late king's power to grant any part of that continent not possessed before by any legall grant, then in force from the crown of England, (which Maryland was not at the time of the Lord Baltimore's patent thereof), as it was for King James to grant the aforesaid country to the said Virginian company.

2. Object. A pretended wrong done by the Lord Baltemore to the above mentioned Capt. Clayborn, in dispossessing him of an island in the sayd province, called the Isle of Kent.

2. Answer. It was a business above 14 years since, upon a full hearing of both parties then present, decided by the then lord's commissioners for forraign plantations, against the sayd Capt. Clayborn and his partners, Mr. Maurice Thomson and others; and the sayd Capt. Clayborn, hath himselfe, also by divers letters of his, to the Lord Baltemore, acknowledged the great wrong he did him therein; which letters were proved at the committee of the navy, and are now remayning with that committee. Wherefore, the Lord Baltemore humbly conceives, that against the sayd Capt. Clayborn's owne acknowledgement, and a *determination* so long since of that business, and above 14 years quiet possession in the Lord Baltemore of the sayd island. The parliament will not think fit upon a private controversie of meum and tuum between him and the sayd Clayborne, to impeach his patent of the sayd province, or his right to the said island, but leave both parties to their legall remedy.

3. Object. That the said patent constitutes an hereditary monarchy in Maryland; which is supposed by some to be inconsistent with this Commonwealth.

3. Answer. The jurisdiction and stile which the Lord Baltemore useth in Maryland is no other then what is warranted in his patent, (as may appeare by his answer at the Committee of the Navy to the exception above mentioned, and by perusall of the said patent,) and that is onely in the nature of a county palatine, subordinate and dependent on the supreme authority of England. For by the patent, the soveraign, dominion, allegiance, the fifth part of all gold and silver oare, which shall happen to be found there; and severall other duties are reserved to the late kings, his heires and successors, who are now the parliament of this commonwealth. And although it be true that a monarchicall government here, which should have any power over this commonwealth, would not be consistent with it, yet certainly any monarchical government in forraigne parts, which is subordinate to, and dependant on this commonwealth, may be consistent with it, as well as divers kings, under that famous commonwealth of the Romans, heretofore were; insomuch as they thought it convenient and fit to constitute divers kings under them. All lords of manors or liberties here in England may in some kinds be as well accounted monarchs, within their severall manors and liberties, as the Lord Baltemore, in Maryland, for writs issue at this day in their names out of their courts, within their respective manors and liberties; and not in the name of the keepers of the liberties of England. Oaths of fealty are

taken to them by their tenants, and they have great royalties and jurisdictions ; some more than others, and some as great in proportion within their said manors and liberties as the Lord Baltemore hath in Maryland, except the power of making laws, touching life and estate, power of pardoning, and some few others of lesser concernment, which although that may not be convenient for any one man to have in England, yet are they necessary for any, (whether one man or a company,) that undertakes a plantation in so remote and wilde a place as Maryland, to have them there, especially with such limitations as are in the Lord Baltemore's patent ; to wit, that the laws be made with the consent of the freemen of the said province, or the major part of them or their deputies ; and that they be consonant to reason, and be not repugnant or contrary, but as near as conveniently may bee agreeable to the laws of England, which limitations the Lord Baltemore has not exceeded, as may appeare by his answer to the Committee of the Navy to the exceptions above mentioned. And although it be not fit that any one person should have a negative voyce here in the making of lawes, yet certainly as no company, so no single man, that is well in his wits, will be so indiscreet as to undertake a plantation at so vast an expence, as the Lord Baltermore hath ; if after all his charge, pains and hazards, which are infinite in such a business, such necessitous, factious people, as usually new plantations consist of, for the most part, and went thither at his charge of by contract or agreement with him, should have power to make lawes to dispose of him and all his estate there, without his consent, and he be left without remedy, for before the supreme authority here, upon any appeal to it, will probably be at leasure from business of greater consequence, or perhaps have convenient means to relieve him, he may be ruined and destroyed. Such chargeable and hazardous things as plantations are, will not be undertaken by any, whether it be a company or a single man, without as great incouragements or priviledges, as are in the Lord Baltemore's patent of Maryland. And if it be not any prejudice, as certainly it is not, but advantageous to the interest and honor of this commonwealth, that an Englishman, (although a recusant, for the Lord Baltimore knows of no laws here against recusants which reach into America,) should possess some part of that great continent of America, with the priviledges and jurisdictions aforesaid, dependant on and subordinate to it, then the Indian kings, or forreigners, (as the Dutch and Swedes afore mentioned,) who have no dependency on it, as certainly it is. Then he

hopes the parliament will not thinke it inconsistent with this commonwealth, but just, that he should enjoy the rights and priviledges of his patent. Upon confidence whereof, he and his friends have adventured the greatest part of their fortunes, for the honour of this nation, as well as their own particular advantage, especially seeing no other person hath any wrong done him therein, for none are compelled to go to Maryland, or to stay there, but know before hand upon what terms they are to be, in that place. And the English inhabitants of that province are so well pleased with the government constituted there by the said patent, as that by generall consent of the Protestants, as well as Roman Catholiques, it is established by a law there, as well as freedome of conscience and exercise of religion within that province, is to all that profess to believe in Jesus Christ, as appears by the laws of that province, now in the hands of the said Committee of the Navy. Which makes it evident, that a petition, lately read at the committee, with ten unknown hands to it, in the name of the inhabitants of Maryland, against the Lord Baltemore's said patent, is eyther obscure factions fellows, which is easie to bee procured by any ill affected person against any government whatsoever.

4. Object. That the Lord Baltemore gave his assent to certaine lawes, for Maryland, in 1650, in one of which lawes the late King Charles is stiled the late high and mighty Prince Charles, the first of that name, King of England, &c. And in another of the said laws it is enacted, that the Lord Baltemore shall have 10s. a hogshead for all tobacco's shipt from Maryland, in any Dutch vessell, and bound for any other port then his Majesties ; whereby some would infer that hee did acknowledge a Charles the Second to be king, &c., for that the word first in one law inferred a Secone ; and by the word majesty in the other law, the Lord Baltemore must mean the late king's eldest son ; for the late King Charles was dead when the Lord Baltemore assented to that law, to wit, in August, 1650.

4. Answer. To this is answered: That although those lawes were assented unto by the Lord Baltemore in August 1650, yet it appears by his said declaration of assent that some of them were enacted in Maryland by the assembly there in April 1649; whereof the law was one wherein those words, to-wit: "any other ports than his majestie's," are inserted (as was proved to the said committee of the navy). At which time the people in Maryland could not know of the late king's death, which was but in January then next before. In February, March and April ships usually return from those parts, and in Sep-

tember, October and November goe thither; so as the assembly in Maryland could mean nobody by that word majesty but the late king; and the Lord Baltemore could have no other meaning but what the assembly had, for he did but assent to what they had done and was before enacted as aforesaid.

As to the other law wherin those other words are inserted, to-wit: "the late high and mighty Prince Charles, the first of that name," &c., it was one of those laws which were passed by the assembly in Maryland in April 1650, when the people there knew of the late king's death, to-wit: a year after the other law above mentioned, with divers others which were enacted in April 1649 as aforesaid, though in the ingrossement of them all here (when the Lord Baltemore gave his assent to them altogether in August 1650), it is written before it because they were transposed here in such order as the Lord Baltemore thought fit, according to the nature and more or less importance of them, placing the act concerning religion first, &c. And as to those words "the first of the name," &c., the word first doth not necessary imply a second, as some infer upon it, no more then when the first-born of thy sonnes were commanded to be given to God did imply a second, which was performed though there were never a second. The word first hath relation to the time past, and not to the time to come. King James is stiled in history James, the first of that name, king, &c., though there were never a second of that name king of England, &c. And it is usually written and said that a king died in the first year of his raign, when he lived not to enter into a second; the like whereof may be made out by many other instances. And as the Lord Baltimore is confident the assembly in Maryland had no intention by those words "Charles, the first," &c., to infer a second king of that name, no more had he, in his assent to that law, any such thought or meaning. And the comportment of him and his officers in Maryland, above mentioned, towards the parliament and their friends, doth sufficiently confirme it.

Among other privileges granted to the L. Baltemore and the inhabitants of Maryland by his said patent, one is (by an express clause therein inserted) that the said province should not from thenceforward be or be reputed any part of Virginia, or bee dependant or subject to their government in anything (although the government of Virginia was then immediately in the king's hands), but was by the said patent (in express words) separated from it; and so it hath been ever since; which was one of chiefest incouragements, upon confidence whereof

the L. Baltemore and others adventured so great a part of their estates thither as aforesaid. For it was the privileges and immunities, and not the land only, granted by the said patent which did chiefly induce the Lord Baltemore to make so great an adventure, without which he would not certainly, upon the conditions of a common planter, have disbursed anything upon a plantation in America. Wherefore he hopes the parliament will not thinke it just or fit to deprive him and the inhabitants of Maryland of so important a priviledge (which is their inheritance, and dearly purchased by them), by putting them now under the government of Virginia, upon colour of any articles agreed on when the Virginians were declared enemies of the commonwealth; and the rather because, even in point of policy also (as is humbly conceived), for certain reasons of state hereunto annexed, it will be more advantageous to the honour and interest of this commonwealth to keep those two governments still divided, and to preserve and to protect the Lord Baltemore's rights and priviledges aforesaid in Maryland, than to destroy either of them.

Reasons of State concerning Maryland in America.

1. First. It is much better to keep that government still divided from Virginia (as it has been for these twenty years last past), then to unite them, for by that means this commonwealth will have the more power over both, by making one an instrument (as occasion shall require), to keep the other in its due obedience to this commonwealth.

2. Secondly. In case any defection should happen in either colony (as lately was in Virginia), the other may be a place of refuge for such as shall continue faithful to this commonwealth, as Maryland lately was. Upon that occasion, which it could not have been, in case the government of that place had been at that time united unto, or had any dependence on Virginia.

3. Thirdly. It will cause an emulation in both; which of them shall give the better account of their proceedings to the supreme authority of this commonwealth, on which they both depend, and also which of them shall give better satisfaction to the planters and adventurers of both.

4. Fourthly. The Lord Baltemore having an estate, and his residence in England, this commonwealth will have a better assurance of the due obedience of that plantation, and the planters and adventurers thither, of having right done unto them in case the government thereof

have still a dependence on him, and he upon this commonwealth (as he had before on the late king), then if the government of that place, at so remote a distance, should be disposed of into other hands, who had little or nothing here to be responsible for it, and whose interest and residence were wholly there.

5. Fifthly. By the continuance of his interest in the government, there of this commonwealth, and the people there, are eased of the charge of a deputy governor, which he at his own charge maintains; the inhabitants there being yet so poor (and so like to be for many years), as they are not able to contribute anything towards it.

6. Sixthly. If the Lord Baltemore, should by this commonwealth, be prejudiced in any of the rights or priviledges of his patent of that province. It would be a great discouragment to others in forraign plantations, upon any exigency to adhere to the interest of this commonwealth, because it is notoriously known that by his express direction, his officers and the people there did adhere to the interest of this commonwealth, when all other English plantations, (except New England), declared against the parliament, and at that time received their friends, in time of distress, for which he was like divers times to be deprived of his interest there, by the colony of Virginia and others, who had commission from the late king's eldest sonne for that purpose, as appears by a commission, granted by him to Sir Wm. Davenant, the original whereof remained with the cancell of state, and a true copy thereof is hereunto annexed.

A true copy of a commission from the late king's eldest sonne to Mr. William Davenant, concerning Maryland, the original whereof remains with the councel of state.

Charles. R.

Charles, by the grace of God king of England, Scotland, France and Ireland, defender of the faith, &c., &c., to our trusty and well-beloved Sir William Davenant, Knight, and to all others whom these presents shall come, greeting:

Whereas, the Lord Baltimore, proprietary of the province and plantations of Maryland, in America, doth visibly adhere to the rebells of England, and admit all kinde of schismaticks and sectaries, and other ill-affected persons, into the said plantations of Maryland, so that we have cause to apprehend very great prejudice to our service thereby,

and very great danger to our plantations in Virginia, who have carried themselves with so much loyalty and fidelity to the king, our father of blessed memory, and to us, know yee therefore, That we, reposing speciall trust and confidence in the courage, conduct, loyalty and good affection to us, of you, Sir William Davenant, and for prevention of the danger and inconveniences above-mentioned, doe by these persons nominate, constitute and appoint you, our lieutenant governor of the said province or plantations of Maryland, with all posts, castles, plantation posts, and other strengths, thereto belonging, to have, hold, exercise and enjoy the said place, and command of our lieutenant governor of Maryland, during our pleasure, with all rights, priviledges, profits and allowances, any wayes appertaining or belonging to the same; and, although wee intend not hereby to prejudice the right of the proprietary in the soyle, but have for our security thought fit to intrust you during these troubles. Wee, notwithstanding, give you full power and authority to doe all things in the said plantations which shall be necessary for our service, and for securing them in their loyalty and obedience to us, and prevention of all dangers that may arise from thence to our loyall plantations in Virginia. Further requiring and commanding you to hold due correspondence with our trusty and well-beloved Sir William Berkley, Knight, our governor of the said plantations of Virginia, and to comply with him in all things necessary for our service and the mutuall good of both plantations. Requiring and commanding hereby all officers and ministers, and all others, our subjects whatsoever, of the said plantations of Maryland, to admit and receive our said lieutenant governor, according to this our commission, and to obey and pursue your order in all things, according to the authority we have given you; and likewise requiring and commanding our governor and councell of Virginia; and likewise all other, our loving subjects of Virginia, to bee aiding and assisting to you, not onely to the settling and establishing of your authority, as our lieutenant governor of Maryland, but also in all such helps and assistances, as may be necessary for your preservation there, and for the mutual good of both plantations as aforesaid.

Given at our court in Jersey the 16–60 day of February, 1650–49, in the second yeare of our reigne.

Chapter 144. Virginia and Maryland, or The Lord Baltemore's Printed Case uncased and answered. Shewing the illegality of his Patent and usurpation of Royal Jurisdiction and Dominion there.

With the Injustice and Tyranny practised in the Government against the Laws and Liberties of the English Nation, and the just Right and Interest of the Adventurers and Planters. Also, a Short Relation of the Papists late Rebellion against the Government of his Highness, the Lord Protector, to which they were reduced by the Parliament's Commissioners: but since revolting, and by Lord Baltemore's instructions caused to assault the Protestants there in their Plantations there—in number repulsed, some slain, and all the rest taken Prisoners. To which is added a Brief Account of the Commissioners proceedings in the reducing of Maryland, with the Grounds and Reason thereof; The Commission and Instructions by which they acted. The Report of the Committee of the Navy concerning that Province; and some other Papers and Passages relating thereunto. Together with the Copy of a Writing, under the Lord Baltemore's Hand and Seal, 1644. Discovering his Practices, with the King at Oxford, against the Parliament, concerning the Londoners, and others, trading in Virginia.

"For the oppression of the poor, for the sighing of the needy, now will I arise saith the Lord. I will set him in safety from him that puffeth at him."—Psal. 12 : 5.

London Printed, and are to be sold at the Crown in Popes, headally, and in Westminister-Hall. 1655.

Virginia and Maryland, or The Lord Baltemore's printed Case uncased and answered.

In the year 1607, divers preceding discoveries having confirmed an opinion, that the country of Virginia was fit for plantation, it pleased God to affect the mindes of very many worthily disposed noblemen, gentlemen, and others, to conceive it as a matter of great religion and honour to undertake the work of perfecting a Christian plantation in those parts. Whereupon King James was pleased to become the first founder of this noble work. And by his letters patents, from time to time renewed and enlarged, granted all ample priviledges and immunities, both to those that managed in England and those that went to

inhabit. Therewith gave so an encouragement, that fifty Earls and Barons, three hundred and fifty Knights, and six hundred gentlemen and merchants of primest rank, became incorporated, and were originally named in the letters patents, by the name of the Company of Virginia ; being a greater union of nobles and commons than ever concurred to such an undertaking. But nevertheless, partly by the natural difficulties incident to all new plantations, but chiefly through the unnatural and petty impediments arising by the cross agitations of two powerful factions in the company, the work went heavily on the first twelve years, appearing desperate in the severall ill successes thereof. And though afterwards somewhat advanced and prosperous, yet in the year 1621, by the fatal blow of a massacre, it was almost shattered to pieces, and brought to a very low and calamitous condition. Which occasion the contrary faction presently took hold of, insomuch that they exceedingly slighted the action ; and *not to* cast aspersions on the country and on the whole management of that affair. And then further strongly possessed and advised, the then king, against the form of the companies government ; as consisting of an excessive number of councellors, and a confused popularity, as being a nurse of parliamentary spirits, and obnoxious to monarchical government. Thereupon order was made upon the eighth day of October, 1623, at the council table, whereby the company were moved to give in their assents for surrendering their patent and altering their form of government, and a new one proposed, wherein the interest and rights of all men should be preserved. Which order the company not submitting unto, a quo warranto was directed for the calling in of their patent, and an advantage taken upon their mispleading. The patent was condemned in Trinity term following. For many years after, not vacated upon the record in the office of the rolls, whereby some that fought the overthrow of the Lord Baltemore's patent for Maryland in the beginning of the parliament, 1640, took out the Virginia patent again, under the broad seal of England, therefore thought by primest lawyers now to be unquestionably in force, at least to point of interest, and that patent of Maryland unconsistent and void.

Thus in brief was the late company dissolved, and a commission given to divers lords and others, for present directing and ordering the affairs of Virginia; and that they should advise, touching a better form of government, for advancing and establishing the colony. Then issued also severall proclamations and several orders from the

council table, with great assurances, under the broad seal and privy seal, that all men with the adventurers and planters, should be assured that their rights and interests should be conserved and enlarged onely alteration in point of government. But both that commission and renewing of the companies charter expired, and all those proceedings were delayed by reason of the death of King James, which then suddenly ensued. The principal scope of that commission was that they should finde a better form of government for the country's advancement, and therein was especially promised the conservation of every man's right intentions, worthy of the wisdom and justice of so great a prince. But nothing was done by those commissioners, touching either of those ends, not by those by whose prosecution these things *hapned*, who having attained their private ends of spleen and profit. Upon the changes and revolutions of ensuing times, deserted the interest of the colony, and left her, weltering in her blood, unsupplied with ammunition and arms, in the heat of a difficult war with the Indians, the burthen and charges whereof was onely undergone by the remaining planters, who were then forsaken by their former friends, were constrained both to work and fight for their lives and substance, and thereby preserve the colony from desertion, and at last restored it, by the blessing of God, to peace and plenty.

And then about the year 1633, Lord Baltemore pretending, though not truely, the greater part of the country was emplanted, procured that the aforesaid judgment, so long delayed was entered, and obtained a patent for that part now called Maryland, which he hath since held, with a few people, and small adventurers, *bebatting* of those to whom it belonged from planting of it. Destroying and ruinating those formerly seated under Virginia, at the Isle of Kent, and interdicting trade with the Indians for furs, discovered and begun by the Virginians, by direction and commission from the king, which since by this means is enjoyed by the Dutch and Swedes, with profit of many thousand pounds yearly; which trade had been solely in the English nation's hands, had not the Lord Baltemore interdicted it, and seized all vessels, and displanted these plantations.

And those Swedes and Dutch do trade for great quantities of guns, powder and shot, with our Indians, to the total endangering this colony, if not timely prevented. Such a ground work, had the patent of Maryland, upon the rights and labours of others; and as unreasonable and unjust, have been the whole proceedings and management of their colony and interests. At their first arrival surprising and con-

fiscating many vessels, with the goods of divers, that they found trading with the natives, under the commissions of Virginia, which they had enjoyed neer thirty years. And professing an establishment of the Romanish religion, onely they suppressed the poor Protestants among them, and carried on the whole frame of their government in the lord proprietary's name. All their proceedings, indicature, tryals and warrants in his name, power and dignity, and from him onely, not the least mention of the soveraigne authority of England, in all their government to that purpose, forceably imposing oaths (judged illegal in a report made by a committee of the council of state 1652), to maintain his royall jurisdictions, prerogatives and dominions as absolute lord and proprietary, to protect chiefly the Roman Catholick religion, in the free exercise thereof. And all done by yeerly instructions from him out of England, as if he had been absolute prince and king. By all which is easily evident that the "patent of Maryland" was grounded upon no good foundation.

The king misinformed when in nothing more deeply and directly could the honour and justice of his throne be concerned then in confirming and conserving the interest of so great a conjuncture of nobles, knights, gentlemen and merchants, who so piously and worthyly adventured their moneys, and expended their estates and labours; whose rights and interests through their patent, were called in for the time in point of government, yet had received the most solemn declarations and assurances, under the broad seal, and privy signet, orders of councels, letters to the colony, and by general proclamations there and here.

That it was impious to think that either the then king, or King James, being rightly informed would ever have granted such a patent as this Maryland, it being ne'er two-thirds parts of the better territory of Virginia; and as no way consistent with equity and the honor and publick faith of the kingdoms, so was no way agreeable (in the absolute and regal power assumed and executed by him) to the late monarchical government, or to the present authority of the commonwealth of England, under his highness the lord protector; and most injurious to the rights and interests of the noble adventurers, and the painful indefatigable planters, who had so long under God concerved the country from total ruine.

A short and successive narration, of most of the aforesaid publick assurances, follows, viz:

1. By an order of the council the eight of October, 1623, before the quo warranto brought to arm the minds of the adventurers and planters, against any mistaken fear and apprehension as if their estates should receive prejudice.

2. And whereas the lords of the council were informed that the intended change of the government had begot a general discouragement amongst the adventurers, notwithstanding sundry other declarations made at the board, viva voce, and that former act of councel. Their lordships were pleased by an order of the twentieth of October, 1623, to declare again that there was no other intention, but onely and meerly in reforming and change of the present government; and that no man should receive any prejudice, but have his estate fully and wholly confirmed, and if in anything defective, better to be secured. Which order was sent over by their lordship's command, and published in Virginia for encouragement of the planter.

3. King James was also pleased to express the same in his commission to sundry of his own privy councel, and other commissioners, for the time being, for the affairs of Virginia, July 5, 1624, that his intention was to alter the letters patents as to the form of government, but with the preservation of the interest of every adventurer and planter.

4. The like declaration of the king's intention was exprest in the commission then sent to Sir Francis Wiat and the councel then appointed by his majesty to direct the affairs and people in Virginia; and the like hath been inserted in all King Charles' commissions, and of all the governments of Virginia that have been since that time to this present.

5. The said King Charles, by his proclamation, May 13, 1625, declared that his aim was onely to reduce the government in such a right course as might best agree with the form held in the rest of his monarchy, and not intended to impeach the interest of any adventurer or planter in Virginia.

6. The lords of the councel, by the letters dated the 24th of October, 1625, declare to the colony, that the king's pleasure was to preserve every man's particular right, and the planters to enjoy their former priviledges with addition of other requisite immunities, encouraging also the planter to discoveries, both by sea and land, and to perfect the trade of furs; which letter, according to their lordships' command, was published in Virginia. But Captain Clayborn, who was thereupon employed by commission from the governor, under the

king's broad seal and seal of the colony, and then discovered those parts of the trade of Maryland, was thereby utterly undone, supplanted and expelled by the Lord Baltimore.

7. The king also, for the encouragement of the planters, by his royal letters the 12th of September, 1628, was pleased to promise to renew and confirm unto the colony, under the great seal of England, their lands and priviledges formerly granted to them.

8. And when the generall assembly, consisting of the governors and burgesses of the whole colony, complained to the lords of the council of the interrupting of their trade by the Lord Baltemore's deputies, their lordships were pleased, by their letter July 22, 1634, to signifie that the plantation of Virginia should enjoy their estates and trade with the same freedom and priviledges as they did before the recalling of their patent.

By all which it appears, that howsover the government could not be reduced from that popular form of the company in England, but by revocation of the patent itself; yet in respect of both those kings' declarations, and the lords' orders, the adventurers and planters of Virginia, as to their rights and priviledges, according to the rule of equity, remain in the same condition as if no such judgment had been given.

Object. But they answer hereunto to this effect, though not truely *neither:* That the Lord Baltemore's patent takes in no part that the Virginians had then planted, and so the interests of all men is preserved; and that Maryland is no other than a particular plantation, as the company used to grant to divers adventurers and planters, and the king might do as much as the company while they stood.

Answer 1. We reply: That the adventurers and planters were encouraged to expend their estates in so vast a proportion, and to hazard their lives in all extremities, always accompanying new designs and beginnings, in hope that their shares, upon the division of lands, being four hundred miles along the seashore, and into the land from sea to sea, would recompence them and their heirs, as in Ireland heretofore and now is done. But this interest, by the patent of the Lord Baltemore's, comprehending neer two degrees, which is an hundred and twenty miles, is wholly taken from them, and scarce is there any room for any adventurers to take up any land due unto them.

It is truely answered, that all the adventurers of the company were tenants in common to all the land which was not actually divided and

set out, and their claim cannot be justly thus nullified, and yet their interest said to be reserved.

3. It is granted that the Lord Baltimore may have as large a proportion of land as ever was granted to any by the company, though his adventurers have never been proportionable to some men's. But we think it agreeing to reason that he should people it, and either show his right to it by the adventure of people sent over to plant it, which was by the company appointed to be fifty acres to every person transported thither. Otherwise, how unreasonable is it, he should possess two-third parts of the bay of Virginia, which may perhaps be said to be as big as the kingdom of England and Scotland, and yet now in many years, have not more men there, except such as have gone from Virginia than can or do plant as much as is contained in a small corner thereof, and those chiefly employed in tobacco. And the great name of Maryland is but in effect made a factory for trade; ammunition and arms being as commonly sold to the Indians (though not altogether so openly) as among the Swedes and Dutch. A nursery for Jesuits, and a bar to keep off other planters from the greatest part of the countrey left void, and for the most part, not known by him or his.

5. We say, that after we had discovered and brought the Indians of those parts of Maryland to a trade of corn and beaver, by virtue of the king's instructions, under the broad seal of England, with the expense of our blood and estates, and exercised annual intercourse with them above eight and twenty years. How can it be said our interests and rights are preserved, when we are forbidden this trade. Our men slain, vessels and goods seized, persons imprisoned, and the whole trade assumed onely to the Lord Baltimore's use, and he not able to manage it either, but left it to the Swedes and Dutch.

6. And chiefly we answer. We claim right by possession, having planted the Isle of Kent almost three years before ever the name of Maryland was heard of, and burgesses for that place sitting in the assembly of Virginia. Whereby it is evident the Lord Baltimore's suggestions to the king, mentionnd in his patent, that those parts were uncultivated and unplanted unless by barbarous people, not having the knowledge of God, was a misinformation, and by it, that patent appears to be surreptitiously and illegally gotten; and if the Lord Baltimore takes away those lands from them who have also purchased the interest of the natives (a right not inconsiderable), and seized their goods, and that in a hostile manner as he hath done, how can it

be said that those men's interests and rights are preserved? They being the first discoverers of that island, by virtue of the king's commission, and planted there under the government of Virginia, on the confidence, they apprehended, from the former assurances. And these began in great part the trade of furs.

How unjust an intrusion, then, will the Lord Baltimore's patent appear, which overthrows the interests of so many and such persons? For the company of Virginia were of a nature diversified from other companies, which, if it had not been founded on so good grounds, yet their zeal and pious endeavors to propagate the true Christian religion, enlarge the English dominions, and to increase the trade and strength of shipping, and considerably the customers, do deserve justice, with addition of reward for so honorable and good intentions. In the next place, to prove the Lord Baltimore's usurpation of royal jurisdiction and dominion in Maryland, as absolute lord proprietary, there needs no more than his commissions and processes, running on this stile, viz: We, us, and, given under our hand and greater seal of arms, in such a year of our dominion, etc. The oath also that he tenders to all his subjects and the inhabitants, such being the very words thereof, as by the oath itselfe, copied from his own hand, and herewith published, appears. This is surely incompatible to the English nation, that there should be any such principality erected over them. Whereas the books of law teach us, that all writs, executions and commands, ought to be done in the name of the supreme authority onely; and is so appointed by the late platform of government, for all the dominions of the commonwealth, of which this is a part. And by a late ordinance declaring treason upon such penalty, that none ought to exercise any power but in the Lord Protector's name; and these men acting so wilfully, cannot excuse themselves. By the ancient English laws, all those pleas that concern life and member and pardons, cannot be done in the name of any inferior person, and all writs, indictments and process, as heretofore, so must now only be in the name of the Lord Protector, and not in the name of the Lord Baltemore, as he hath assumed in Maryland. And whereas, the Lord Baltemore pretends to the like priviledges, as in the county palatine of Duresme, even those priviledges of Duresme, and all the other county palatines of England, were, and are taken away, as dishonourable and incongruent to the English nation, by the statute of the 27th Hen., 8, 25. With what strange confidence then doth the Lord Baltemore publish to the world, that these royalties and priviledges are warranted by his

patent; when as they are contrary to law and to the government now established under his Highness, and to a clause in his patent, wherein it is provided, that no construction be made thereof whereby the government in the commonwealth of England should suffer any prejudice or diminution.

Whereby it appears there was as good cause to reduce Maryland as Virginia. The people and general assembly thereof, also complaining of their grievances, among many other exorbitant usurpations of Lord Baltimore's over them, as appears by their complaint in Governor Green's time, made and recorded there by a committee of that assembly. But 'tis known that Governor Green was deposed by Lord Baltemore for suffering that committee, and not for proclaiming the King's son, as he alledgeth, when no such thing appears in rerum natura, nor no word in all his many instructions of the parliament, much less of his pretended affection to them, or their friends, but clean contrary. And 'tis notoriously known, that all the Lord Baltemore's governors usually took the king's part against the parliament, and his brother, Mr. L. Calvert, his only governor, while he lived there, ever declared himself against them. And to evince this irrefrageably, and clearly to demonstrate the management and complexion of this business, both Lord Baltemore himself and his brother, by long solicitations at Oxford, procured and sent over in Anno 1644, commissions in 1644, King's broad seal, to surprise the parliament and London ships in Virginia, and to impose customs, raise regiments, and fortifie the country against the parliament; which appears by several writings under the Lord Baltemore's hand and seal, (one of which is hereunto annexed.) They did with zeal proclaim the King's son, Charles the Second, in Maryland, and some that read it, and assisted therein, of the primest rank, are still continued councellors by him, and never a word of blame. Whereas 'tis evident his own interest is more than circumspectly watcht over and contended for. How can he pretend that his governor, Captain Stone, bare any affection to the parliament, when without check, from himself, in their assemblies, laws, he used the name of King, and His Majesty, and of Charles the First, when the Second was proclaimed there. And why did Lord Baltemore, himself, in England, advisedly consent, and approve those laws in terminis, under his hand, in 1650, if such had not been his own thoughts toward the parliament. The commissioners that were employed by the parliament to reduce Virginia, Anno 1652, were commanded to reduce all the plantations, in the bay of Chesapeak,

and then that all writs should issue in the name of the keepers of the libertie of England. They saw not how they could decline this service, well knowing how contrary to those commands, and the honor and interests of the parliament, the government of Maryland was exercised, and think strange any should pretend assistance, and supply of victuals from Maryland to that fleet, when no such thing ever was. That the parliament ships were entertained there in his harbors, when as never any of them came at Maryland, nor within near 100 miles thereof, save only the Ginny frigate, who went thither, to reduce that province. They knew his governor had always borne affection to the king's side, that Charles the Second (hath been said), was proclaimed there; that the council were all Papists, or indifferently affected, and that they refused to govern the people, by the laws of England (another clause in the parliament's commission), to which several of their actings, and even Lord Baltemore's instructions were contrary, as in this particular, and many others, appears by the reports of the committee of the navy and the council of state, to whom the parliament referred this cause. A copy of which report is hereunto annexed. And they ruled in Maryland in such an absolute way and authority, as no Christian prince or state in Europe exercises the like.

His governor has an absolute negative voice in all things, and in the assembly of the Burgesses, calls into the upper house (as he term it), whom he will, to over-vote the rest. Places and displaces whom he will in that council, and the Lord Baltemore himself, though in England, appoints all officers, even to the meanest degree, and who flatter him most are sure to have it. His mandates are sent over, to stop justice, and the judges imprisoned for proceeding according to justice. Writs are given out under the governor's hand, in his own case, without any judgment of court, to seize men's goods into the governor's hands. His governors are not finable for any just debts, and so they usually exercise their priviledges, even to the oppression and discontent of the people. No appeals allowed from their courts, though consisting but of two men (and those perhaps of no great knowledge or skill in government), no not to the general representative assemblies. It would be infinite to rake in this dunghill, but all indifferent men, that have lived, and been there, know these things to be sad truths. And surely not without cause, have the general assemblies there, most of the councel, and the freemen been often contesting with the Lord Baltemore's governors about these things, and

yet could never obtain any redress from him, but have resolved to petition the state of England.

Why, therefore, should Maryland, so ill founded, and so ill managed, be wrung from the right of Virginia, against all law and equity, as is before truely set forth? and be established to Lord Baltemore to possess a professed rescusane, as his published book intimates; who hath in effect made it a subject of his own domination and tyranny (being his main aim). But to colour it and the better to get friends, first made it a receptacle for Papists, and priests, and Jesuits in some extraordinary and zealous manner, but hath since discontented them. Many times and many wayes, though intelligence with bulls, letters, &c., from the Pope and Rome, be ordinary for his own interest, and now admits all sorts of religions, and intended 2,000 Irish, and by his own letters c'cears and indemnifies one that said. Those Irish would not have a Bible in Maryland.

His country, 'till he employed Captain Stone, never had but Papist governors and councellors, dedicated to "St. Ignatius," as they call him, and his chapel and holyday kept solemnly. The Protestants, for the most time, miserably disturbed in the exercise of their religion, by many wayes plainly enforced or by subtil practices or hope of preferment, to turn Papists, of which a very sad account, may from time to time be given, even from their first arrival to this very day.

Virginia hath used all good neighborhood towards them, without which assistance and supply, even of all things, they could not have subsisted; for their numbers were inconsiderable and their adventurers small and very little, after the first ship, in comparison of such a work. And though Lord Baltemore pretends great adventures with his friends thither, yet none have appeared there to any considerable value from him for many years; only what merchants and some few have done upon returns of tobacco and beaver. So that, in truth, it will appear, and that by his own letters, too, Maryland hath been chiefly planted by Virginia from first to last, and by people from thence wanting seats in their narrow limits, Maryland taking away above half the country which (as hath been said before) was onely discovered by Virginia, with continual trade and abode of people there for above 20 years, by commissions and warrants in the king's name, and was planted by Colonel Clayborn, under Virginia government, some years before ever the name of Maryland or Lord Baltemore was ever heard

of there; which himself knew, though he misinformed the king, and obtained his patent upon pretence of unplanted places onely.

But the many illegal executions and *murthers* of several persons at the Isle of Kent, by the Lord Baltemore's commands and his officers; the imprisonments, confiscations of many men's estates, and of widows and orphans, to the destruction of many families there; especially his seizure of Captain Claiborn's estate, though out of his patent, because planted to the value of 6,000 pounds, with the great tyranny and wrong done there, although the then king declared and commanded the contrary, but was disobeyed by the Lord Baltemore's agents, are too long to be inserted here.

Many inconveniences and losses hath Virginia suffered by Maryland, of which the continual invitation and entertainment of run away servants, and protecting fugitive persons and indebted, is not the least. But, above all, it is easie to be made appear that the Lord Baltemore hath continually, ever since their seating there, interposed in the matters of government in Virginia by the potency of his friends in the late king's court, both by placing and displacing the governors, councellors and supreme officers, as they stood affected or were displeasing to him.

Mr. Bennett and Captain Claiborn, being two of the commissioners that were employed by the parliament to reduce Virginia and Maryland, are strangely taxed by Lord Baltemore for being his declared enemies; indeed, it seems for thire service to the parliament, he is become implacable towards them; though Captain Curtis, another commissioner, now in England, and all Maryland, can testifie how unwillingly and how tenderly they did anything there, and how much they desired and endeavored to have declined any alteration of either Captain Stone, the governor, or the council, would they have issued out writs in the name of the keepers of the liberty of England and have promised to govern according to the laws of England, both of which they refused under their hands, and the commissions being sent to Maryland is since owned by the report of the committee of the council of state, and the Lord Baltemore taxed and blamed for not issuing out writs as they required them; and therefore seems a bold aspersion for the Lord Baltemore to publish that Maryland, being struck out of their commission, was afterwards, by some mistake, put into the commission the second time; and, as strange as it seems, that now, since the reduction of Maryland, the Lord Baltemore, in opposition

and contempt of the *supream* authority of England, should cause his governor and council most falsely and rebelliously to revolt and recede from the same, and give instructions under his own hand, as he had lately done, to issue out all writs and proceedings, in his own name onely, which they have accordingly done, and not the least mention of the lord protector's name in all their government. This the said commissioners, though they received confirmation of their commission from the parliament, under the seal (the original, the first time miscarrying), yet bore with a long time, onely by letters out of Virginia admonished Capt. Stone, and that council, of their error, and protested against their actings, but they continued obstinate. The commissioners were desirous still to expect and attend a settlement and determination out of England, and to intermeddle as little as they could. But above a year since Lord Baltemore sends over instructions, and commands, to Captain Stone and his new-made council, all our werst Papists, or indifferent, to seize the lands and estates of all such as would not take the oath of fidelity (as he stiles it) before specified. But the people of Maryland generally abhorred this oath, and justly, as is conceived; especially those of Patuxent and Severn declined to take it as being against their engagement, incompatible with their subjection to the commonwealth of England, and incongruous to swear to serve two absolute superiors. Whereupon Capt. Stone and his council proclaimed them seditious and rebels to Lord Baltimore, and forgot not to include the two commissioners, though in Virginia, under the same name with other opprobrious terms; whereupon the people of Patuxent and Severn and Kent, often and earnestly apply themselves, if possible to have relief from those commissioners; yet they still desirously forbore to intermeddle, hoping it would be done out of England, until after many solicitations Mr. Bennet and Captain Claiborne, with only two men, in July last, went thither in a boat, yet using all fair means. But how ill they were treated for their moderation, intended to be surprised by night and made prisoners, and how they were necessitated to prevent greater mischief, and the present ruin of hundred of families, to interpose, to have that oath suspended, and the government managed in the lord protector's name (which being denied, to avoid bloodshed, they re-assumed the government out of those hands that so ill managed it, and placed it in others for the time being, under his highness the lord protector, until he should please to signifie his further pleasure), will appear in a declaration then and herewith published; to

gether with the people's petition, the commissioners' answer thereunto, and an order for setting the government in the hands of Cap't William Fuller and others.

The Lord Baltimore, also, since gives particular commission and command to seize the persons of those commissioners, under his hand and seal, dated in November last; and for their service to the lord protector, to proceed against them, as abettors in mutiny and sedition; chides and upbraids Captain Stone for cowardice, provokes him to fighting and bloodshed (a course too often acted in Maryland); appoints another governor, in case he decline it, and yet sends no revocation of the commissioner's reducement, though he acknowledges he sought it earnestly of the lord protector, but could not obtain it; yet to blind and delude Captain Stone and his council, there came over a letter of recommendation from his highness, of one Captain Barber, and by what practise or mistake it is not known, a superscription thereon to Capt. Stone, governor of Maryland, and by this (together with a copy of that petition of the merchants and others trading to Virginia, brought in by Mr. Eltonhead, and sent over by Lord Baltemore), Captain Stone and all Maryland fall to arms and disarm and plunder those that would not accept the aforesaid oath. A part of them at last stood upon their guard onely sought Capt. Stone to shew his commission, and they would submit. He caused to imprison their messengers, and being of far greater number, assaulted them at their houses, threatened to have their blood, called them roundhead, rogues and dogs, brought whole bagsfull of chewed bullets, rolled in powder, saying, the devil take him that spares any, and so falls on, upon the day dedicated to the Virgin Mary, with the word, Hey for St. Mary. But the Protestants command their men not to shoot upon pain of death ; until some being slain by a volly of shot from the Marylanders, they defended themselves, and God confounded Capt. Stone and all his company before them : there were near double the number in prisoners, to the victors, twenty slain, many wounded, and all the place strewn with Papists beads, where they fled ; but the proceedings thereof, and how the arm of the Lord was revealed, and his mighty power manifested even to admiration, together with the success and the evils drawn upon themselves, appears by the relation thereof, at this time also published by a messenger from thence.

The Lord Baltemore pretends in print his entertainment in Maryland of the parliament friends thrust out of Virginia ; but those very

men whom he so stiles, coming thither, being promised by Captain Stone, he would decline urging the oath upon them, complain of it to the parliament, are in answer thereunto vilified by Lord Baltemore, and publickly taxed for obscure and factious fellows, and in his later letters termed the basest of men, and unworthy of the least favor or forbearance. Such advantages doth he make on all sides, at such a distance, and in such incomposed times, that he confidently takes the liberty to aver such extreme and contrary things, which amaze other men that see them. The place, as himself confessed, had been deserted, if not peopled from Virginia. He might with more reason scruple to supplant the rights of the most considerable conjuncture of worthy men that ever undertook such an adventure as plantation out of England, which hath been the beginning and parent of all the rest.

The late King James revoked the Virginia companies patent for denying him to alter the government, for which he had fundamentally provided, to give instructions from time to time ; and was the same which the last king did by his commission to Sir William Davenant, of which the Lord Baltemore speaks so much, and makes such inferences as serve his own ends. But the truth is, all that can rightly and properly be collected from thence, is onely this, (his right to the soil being in express words reserved.) If the king might dispose of the government of Maryland, why not the parliament, as they have done, and why not the Lord Protector, as he hath also done. Another of those fundamentals was, that no Papists should be tolerated to remain in Virginia, but sent away, if they would not take the oath of allegiance, and was so practiced, that the old Lord Baltemore's refusing, stayed not in Virginia ; and hincill lachryma to all those that were of the councel, who with their wives and children, have not suffered a little for it, of which onely Colonel Matthews and Colonel Claiborn remain alive. His son, this Lord Baltemore, now publishes himself a recusant, and avers contrarily that the laws against Papists and recusants extend not thither, yet his patent says, no interpretation shall be admitted thereof, by which God's holy and truly Christian religion, or the allegiance due to the successors of the State of England should suffer any prejudice or diminution.

By all which surely its most evident. This county palatine, armed and coveted by him, appears disagreeable to law, and to his own patent, and as a monster unlike the rest of the dominions of the commonwealth of England, and contrary to the late platform of govern-

ment under his Highness, the Lord Protector. Yet hath he omitted no means to inforce his dominion on those men, that are most unwilling to submit to him, as an absolute prince, and hereditary monarch. Neither doth that instance of the Roman commonwealth, in his printed pamphlet, hold for him; who though they permitted and continued many kingships over people that formerly had them, as is now done in Virginia among the Indians, yet he cannot show that ever they constituted Kings over the people of Rome, to govern absolutely over them, as this case pleads for. To have a negative voice, yea, and a power ad placitum in all things; that is before specified to the great regret of the inhabitants, the oppression of many; and the obstruction of justice, of which Maryland hath afforded no mean examples and complaints.

But, although Virginia seeks the re-establishment of her bounds, so often assured under the great seal of England and otherwise, yet to renew any such authority as this of Maryland, or that of the company over her, she desires it not; but to be, from time to time, under such government as the state of England shall appoint.

Duplicate instructions for Capt. Robert Dennis, Mr. Rich. Bennet, Mr. Thos. Heg and Capt. Wm. Claiborn, appointed commissioners for the reducement of Virginia, and the inhabitants thereof, to their due obedience to the commonwealth of England.

Whereas the parliament of England, by an act, instituted an act prohibiting trade with the Barbadoes, Virginia, antego, hath committed to this council, several powers therein expressed, for the setling, reducing and governing the said islands; printed copies of which act are delivered you. In pursuance whereof, a fleet is now set forth, victualled, armed and manned, under the command and conduct of Captain Robert, to effect, by the blessing of God, the ends aforesaid. And for the management of that service, you are hereby jointly nominated and appointed commissioners; and for your better directions and proceedings therein, you are to follow these instructions following:

Such of you, as are here, to repair on board the ships, John or the Guinny *friggot*, of the states, which of them you shall think fit, and winde and weather permitting, to sail to Virginia, as Captain Robert

Dennis shall appoint and direct. And upon your arrival in Virginia, you or any two or more of you (whereof Capt. Robert Dennis to be one), shall use your best endeavors, to reduce all the plantations, within the bay of *Chesopiack*, to their due obedience to the parliament and the commonwealth of England.

For which purpose, you or any two or more of you (whereof Capt. Robert Dennis to be one), have hereby power to assure pardon and indemnity to all the inhabitants of the said plantations, who shall submit unto the present government and authority, as it is established in this commonwealth. In which pardons you may make such limitations and exceptions, as you or any two or more of you (where Capt. Robert Dennis to be one), shall think fit.

And in case they shall not submit by fair wayes and means, you are to use all acts of hostility, that lie in your power, to enforce them. And if you shall finde the people so to stand out, as that you can by no other wayes or means, reduce them to their due obedience, you or any two or more of you (whereof Capt. Rob't Dennis to be one), have power to appoint captains and other officers, and to raise forces within every of the plantations aforesaid, for the furtherance and good of the service. And such persons as shall come in unto you, and serve as soldiers, if their masters shall stand in opposition to the present government of this commonwealth, you or any two or more of you (whereof Capt. Rob't Dennis to be one), have here the power to discharge, and set free, from their masters, all such persons so serving as soldiers.

You shall cause and see all the several acts of parliament against kingship, and the house of lords, to be received and published, as also the acts for abolishing the book of common prayer, and for subscribing the engagement and all of the acts therewith delivered to you.

You, or any two or more of you, shall have full power to administer oath to all the inhabitants and planters there to be true and faithful to the commonwealth of England, as it is now established, without a king or house of lords. You, or any two or more of you (whereof Capt. Rob't Dennis be one), have power to give liberty to the inhabitants and planters who shall have taken the engagement formerly mentioned, to choose such burgesses as they shall think fit, and send to the place you shall appoint, for the better regulating and governing affairs there: provided that nothing be acted contrary to the government of the commonwealth of England and the laws established.

You shall cause all writs, warrants and other process whatsoever to

be issued forth as occasion shall require, in the name of the keepers of the liberty of England, by authority of parliament.

In case of mortality or absence of Capt. Rob't Dennis, you or any two or more of you, have power to put in execution these instructions. In case of mortality or absence of Capt. Rob't Dennis, Edmund Currie, commander of the Guinny frigot, is hereby empowered to act as commissioner with you, or any two or more of you; and he is also, in the absence of Capt. Rob't Dennis, to take the charge of the fleet, so far as concerns the shipping, according to the power given to Capt. Rob't Dennis.

And lastly, as we doubt not but you will use your best dilligence and care in carrying out of this affair of consequence, with which you are intrusted, and that by your good endeavors it will have a good issue, so the council will take the same into consideration, that respect may be had of your pains and *travel* therein, and of a recompense agreeable to your service, when the same shall be compleated, and work upon which you are employed shall be finished.

Signed in the name and by order of the council of state, appointed by authority of parliament.

JOHN BRADSHAW, President.

JNO. THURLOE, Cler. of the Council

Committee Navy, 31 December, 1652.

In pursuance of an order of parliament of the 31st August, 1652, whereby the 4 part of the 7 and 8 articles, agreed on at James City, for the surrendering and settling of plantation of Virginia, with certain parchments concerning Maryland, and the petition of the inhabitants of Virginia, are referred unto this committee to consider what patent is set to be granted to the said inhabitants of Virginia, and to hear all parties, and to consider of their particular claims, and to report the same unto the parliament.

This committee, upon examination of matter of fact, and hearing both parties and their council, do find and humbly certifie: That by a patent dated the 23 day of May, in the 7th year of King James, there was granted to divers adventurers and planters, by the name of the

Virginia company, all those lands, countries and territories, situate in that part of America called Virginia, from Cape or Point Comfort, all along the seacoast to the Northward 200 miles, and from the said Cape or Point Comfort, all along the seacoast to the Southward 200 miles, all that space or land lying from the seacoast of the precinct foresaid up into the lands throughout from sea to sea, West and Northwest, and all the islands lying within 100 miles along the coast of both seas, of the precinct aforesaid, with the soyle, &c., thereunto belonging, to hold to them and their heirs forever, under the several reservations therein mentioned.

That the said patent was afterwards, by a quo warranto, in the 21 of the said king's reign, repealed and made void.

That in the 8th year of the late king, upon the humble petition of the Lord Baltemore that he might have and enjoy a colony or parcel of ground in America, then uncultivated and not inhabited by any save the Indians there, was, by patent dated 20 June, 8th year, granted to the said Lord Baltemore all that parcel of land lying in the part of America from the sea on the East to the bay of Chesapeake on the West, extending from Watkins point to Delaware bay, and from Delaware bay to *Portowmack* river, and so along to Watkins point, together with the islands thereunto belonging, and by the said patent called the province of Maryland, to hold the same as in ample manner as any bishop of Durham, within the bishoprick or county palatine of Durham, in England, heretofore ever held or enjoyed; and to hold the same in free and common soccage, as of the Castle of Windsor; reserving to the king and his heirs and successors saith allegiance and dominion, and two Indian arrows yearly, with the fifth part of all gold and silver oar found in and upon the said province; and also liberty for any the people of England or Ireland to fish, as in those seas, as in any ports or creeks of the said province, and to salt and cure their fish there.

That in and by the said parts power is granted to the Lord Baltemore and his heirs to make laws, by and with the council, assent and approbation of the freemen of the said province, or the major part of them, that shall concern life or member, as often as his lordship shall think fit, &c.; so as such laws be consonant with reason and not repugnant nor contrary, but as neer as possible may be agreeable to the laws of this nation.

That by the said patent, the said province separated from Virginia, but by express proviso, declared to be subject and depending upon

the crown of England. And in case any doubt arise about any claim in the said patent, the same were to be decided by the courts of England.

It also appears by examination, taken by this committee, that Kentish island was before the date of the said patent part of Virginia, and planted and inhabited by Capt. Claiborne three years before the arrival of the Lord Baltemore's agents in Maryland, and that Burgesses, in the assembly at Jamestown, in Virginia, for the said island, and that the Virginians had the sole possession of the bay of Chesopiack, and a free trade with the Indians.

That in the year 1633, upon the arrival of the Lord Baltamore's agents in Maryland, the Virginians were prohibited from trading with the Indians, in any part of Maryland, which formerly they had been accustomed. Whereupon several differences arose between Capt. Claiborn's men and the Lord B.'s planters. And Capt. Claiborne continuing his trade a vessell, called the Longtail, was seized upon by the Marylanders, and one Lieutenant Warren (with some others whom he sent to rescue the said vessell), were killed by the Marylanders, in that attempt in Potomoke river. That the goods of Mr. Harman and others were all seized by the Lord Baltemore's agents; and at length, after three years' suffering, Capt. Claiborn was forcibly *disseised* and dispossest of his plantation in Kentish island, and for his safety of his life, to fly into England. And ever since the Lord B. hath had possession of the said island, not suffering any of the Virginians to trade in the said bay without *ceisure* and the confiscation of their goods.

It likewise appears unto this committee, upon a perusal of the several parchments mentioned, in the order of parliament; that the Lord B. hath constituted forms of oaths, and injoyned the taking thereof, by all persons, as well officers as others, within the said province; and that not to the king but to himself, and that he hath issued out writs in his own name. All his commissions and processe running in this stile, (viz): we, us, and given under our hand, and greater seal of arms, in such a year of our dominions over the said province. That he hath likewise appointed an upper and lower house of assembly, and also a private council of state, which is not mentioned in the said patent. And we further find that several of the laws, made by the said Lord Baltemore, are not agreeable to the laws, statutes and customs of England, as for instance—

That the lands, sold by the said Lord Baltemore, are directed to be

purchased and held by him and his heirs, only in soccady as of the manor, &c.

That the oath hereafter mentioned, must be taken by all that shall bear office, or shall inhabit, or come into the said province, upon pain of being banished, and if they return and refuse, to be subjected to such fine as his Lordship shall think fit.

The Oath of the Lieutenant or Chief Governor of the Province of Maryland.

I, A B, doe sware I will be true and faithful to the Right Honourable Cecilius, Ld. Baron of Baltamore, the true and absolute Lord and Proprietary of this province of Maryland, and his heirs, and him, and them, and his, and their rights, royall jurisdictions, and seigniory, all and every of them, into or over the said province and islands thereunto belonging. Will at all times defend and maintaine, to the utmost of my power, and will never accept of, nor execute any place, office or employment, within the said province, any way concerning or relating to the government of the said province, from any person or authority, but from or under the hand and seal at arms of his said Lordship, as Lieutenant of the said province, and in all other offices committed to my charge by his said Lordship's commission or commissions to me, and will willingly yield up the said commission and commissions againe, and all offices, powers and authorities granted, and to be granted, by them, or any of them, into the hands of his said Lordship, and his heirs and assigns, or to such person or persons, as he, or they, shall appoint, whensoever he or they shall appoint me or so to doe, and shall signifie the same to me in writing under his or their hand and seal at arms. And will not presume to put in execution, or attempt to execute, any office, power or authority granted unto me by any of the said commissions, after that his Lordship, his heirs or assigns, Lords and proprietaries, of the said province, shall repeale them, or any of them, respectively, by any writing, under his or their respective hand and seal at arms, and that the said repeal be published in this province. I will doe equall right and justice to the poor and to the rich within the said province, to my best skill and judgment and power, according to the lawes and ordinances of the said province;

and in default thereof, according to my conscience and best discretion, and the power granted and to be granted to me by his said Lordship's commission or commissions, I will not for fear, favor or affection, or any other cause, let, hinder or delay justice to any, but shall truly execute the said office, and offices, respectively, according to his said Lordship's commission to me, in that behalf and to the true intent and meaning thereof, and not otherwise, to the best of my understanding and judgment. I will not know of any attempt against his said Lordship's person or his rights or dominion, into or over the said province, and the people therein, but I will prevent, resist and oppose it, with the utmost of my power, and make the same known with all convenient speed to his said Lordship ; and I will, in all things, from time to time, as occasion shall serve, faithfully counsel and advise his said Lordship, according to my heart and conscience. And I do further sware, I will not by myself, or any other person, directly trouble, molest, or discountenance, any person whatsoever in the said province, professing to believe in Jesus Christ, and in particular no Roman Catholick, for or in respect of his or her religion, nor his or her free exercise thereof, within the said province, so as they may not be unfaithful to his said Lordship, or molest or conspire against the *civill* government established under him ; nor will I make any difference of persons in conferring offices, rewards or favours, proceeding from the authority, which his Lordship hath conferred on me, as his Lieutenant here, for or in respect to their said religion, respectively, but merely as I shall find them faithful and well deserving of his said lordship, and to the best of my understanding, endowed with moral virtues and abilities, fitting for such offices, rewards, or favors, wherein my prime aim and end shall be, from time to time, sincerely the advancement of his said lordship's service here, and the publick unity and good of the province, without partiality to any, or any other sinister end whatsoever; and if any other officer, or persons whatsoever, shall, during the time of my being his said lordship's lieutenant here, without my consent or privily molest or disturb any person within the province, professing to believe in "Jesus Christ," merely for or in respect of his or her religion, or the free exercise thereof, upon notice or complaint thereof made unto me, I will apply my power and authority to relieve any person so molested or disturbed, or troubled, whereby he may have right done him for any damage which he shall suffer in that kind, and to the utmost of my power will cause all and every such person or persons as shall molest or trouble any other person or

persons in that manner, to be punished. I will faithfully serve his lordship as his chancellor and keeper of his great seal of this province committed to my charge and custody, by his said lordship's commission to me, to the best of my skill and understanding. I will cause the impression in wax of the said seal to be affixed to all such things as I have, or shall from time to time receive, commission or warrant, so doing from his said lordship, under his hand and seal at arms, and that it shall not be affixed to any other writing or thing whatsoever, directly or indirectly, with any privy consent or knowledge. I will do my best endeavor carefully to preserve the great seal in my custody, so long as it shall please his said lordship to continue me in the charge and keeping thereof, to the end that it might not be lost, stolen, or unlawfully taken from me, and thereby any other person may affix the impression thereof unto any writing or thing whatsoever, without authority for so doing lawfully derived, or to be derived from, by or under a commission or warrant under his said lordship's hand and seal at arms; and that I will truly and faithfully deliver up again the said great seal into the hands of such person or persons, as his said lordship or his heirs shall appoint, when his or their pleasure for that purpose shall be signified to me, under his or their hands and seals at arms; so help me God, and by the contents of this book.

The Oath of Fidelity to the Lord Proprietor.

I, A. B., do faithfully and truely acknowledge the right honorable Cecilus, Lord Baron of Baltamore, to be the true and absolute lord and proprietary of this province and countey of Maryland and the islands thereunto belonging, and I do swear that I will bear true faith unto his lordship and his heirs, as to the true and absolute lords and proprietaries of the said province and the islands thereunto belonging; and will not at any time, by word or action, in publick or private, wittingly or willingly, to the best of my understanding, any way derogate from, but will, at all times, as occasion shall require, to the utmost of my powers, defend and maintain all such his said lordships and his heirs, right, title, interest, privileges, royal jurisdiction, prerogative propriety and dominion, over and in the said province of Maryland and the islands thereunto belonging; and over the people

who are or shall be therein, for the time being, as are granted or mentioned to be granted, to his said lordship, and to his heirs, by the king of England in his said lordship's patent of the said province, under the great seal of England. I do also swear that I will with all expedition discover to his said lordship or his lieutenant, or other chief governor of the said province for the time being, and also use my best endeavors to prevent any plot, conspiracy or combination which I shall know, or have cause to suspect, is intended or shall be intended against the person of his lordship, or which shall tend any wayes to the *disinberison* or deprivation of his said lordship or his heirs, the right, title, royal jurisdiction or dominion aforesaid, or any part thereof; and I do swear that I will not either by myself, or by any other person or persons, directly or indirectly, take, accept, receive, purchase, or possess, any lands, tenements, or *hereditant*, within the said province of Maryland or the islands thereunto belonging, from any Indian or Indians, to any other use or uses but to the use of his said lordship and his heirs, or knowingly from any other person or persons, not deriving a legall title thereunto, from or under some grant, from his said lordship, or his said heirs, legally passed under his or their great seal of the said province for the time being; so help me God, and by the contents of this book.

The oath of a Counsellor of State in Maryland.

I, A. B., do swear that I will be true and faithful to the Right *Honourable* Cecilius, Lord Baron of *Baltamore*, the true and absolute lord proprietary of this province of Maryland, and his heirs, and him, and them, and his and their rights, royal jurisdictions, and seigniory, and every of them into and over the said province and islands, hereunto belonging. I will at all times defend and maintain, to the utmost of my power, and will never accept of, nor execute, any place, office, or *imployment*, within the said province, any way concerning or relating to the government, from time to time, but from his said lordship, or his heirs, lords and proprietaries, of the said province, under his or their hands and seals at arms. The peace and *welfare* of the people of this province, I will ever procure as far as I can; I will aid and assist the administering and execution of justice

in all things in my power; to none will I delay or deny right for fear, favor or affection; I will do my best skill, according to my heart and conscience, give good and faithful council to the said lord and proprietary and his heirs, and to his and their lieutenant and chief governor of this province, for the time being, when thereunto I shall be called; I will keep secret all matters committed or revealed unto me, or which shall be moved or debated, secretly in council, and faithfully declare my mind and opinion therein, according to my heart and conscience, and if any of the said treaties and council, shall touch any of the privy counsellors of this province; I will not reveal the same to him so touched or concerned, but will keep the same secret, until such time as by the consent of the lord proprietary or chief governor, here for the time being, publication shall be made thereof; I will, as a counsellor, a justice and commissioner for conservation of the peace of this province, do equal right unto the poor and to the rich, to the best of my understanding and judgment, according to the laws, from time to time in force, within this province, and in default thereof according to my best discretion; and generally in all things will do as a faithful counsellor, to the lord proprietary; and I do further swear, I will do myself, or any other person, directly or indirectly, trouble, molest, or discountenance any person or persons in the said province, professing to believe in "Jesus Christ," and in particular no Roman Catholick, for or in respect of his or their religion, nor in his or her free exercise thereof, within the said province, so as they be not unfaithful to his said lordship, nor molest or conspire against the civil government, established under him. So help me God, and the contents of this book.

That whoever shall call any one an idolater, Popish priest, Jesuite, Jesuited Papist, &c., to forfeit ten pounds; and that no Papist shall be troubled for exercise of his religion, so as they be faithful to his lordship.

Whosoever shall be accessary to the running away of an apprentice, shall suffer death; but the party himself, if apprehended, to serve his time double.

Whosoever shall counterfeit his lordship's seal or sign manual, shall suffer the loss of his hand, imprisonment during life, or pains of death, or confiscation of lands, or estates, or any one or more of them, as the governor and chancellor, and council shall think fit.

His lordship suffers Dutch, French or Italian descents to plant and enjoy such equal priviledges with the British and Irish nations.

And lastly, in one of his laws, he mentions "the high and mighty

Prince Charles, the first of that name;" and in another expresseth, "that none shall transport any *tobacco's* in any Dutch vessel, bound for any other port than his majestie's."

Unto all which exceptions answer having been made by the Lord Baltamore, which is hereunto annexed; the same is humbly submitted to the judgment and further direction of this honorable house.

It hath been confessed, by the Lord Baltimore, that one Capt. Green, his lieutenant-governor of Maryland, did soon after the death of the late king, proclaim his son, Charles Stewart, king of England, &c., for which his lordship saith, he did by a writing, under his hand and seal, (which is one of the parchments remaining with this committee), revoke the commission granted to the said Capt. Green, and appointed one Stone, in his room, but there is no such cause mentioned in the said writing.

It likewise appears that in March, 1651, the governor and council of Maryland, being required by the commissioners, that were sent thither, to issue forth writs in the name of the keepers of the libertie of England; they refused the same, saying: they could not do it without breach of their trust and oath.

To the Honorable Richard Bennet, and Col. William Claiborn, Esquires, Commissioners of the Commonwealth of England for Virginia and Maryland:

The humble petition of the commissioners and inhabitants of Severne, alias Ann Arundel county:

Sheweth, that whereas we were invited and encouraged by Capt. Stone, the Lord Baltimore's governor of Maryland, to remove ourselves and estates into this province, with promise of enjoying the liberty of our consciences, in matter of religion, and all other priviledges of English subjects; and your petitioners did, upon this ground, with great cost, labor and danger, remove ourselves, and have been at great charges in building and clearing. Now, the Lord Baltimore imposeth an oath upon us, by proclamation, which he requireth his lieutenant, forthwith to publish, which if we do not take, within three months after publication, all our lands are to be seized for his lordship's use. This oath we conceive not agreeable to the terms on which we came hither, nor to the liberty of our consciences as Chris-

tians, and free subjects of the commonwealth of England. Neither can we be persuaded in our consciences, by any light of God, or engagement upon us, to take such an oath, but rather humbly conceive it to be a very real grievance, and such an oppression as we are not able to bear. Neither do we see, by what lawful power, such an oath, with such extreme penalties, can by his lordship, be exacted of us, who are free subjects, of the commonwealth of England, and have taken the engagement to them. We have complained of this grievance to the late honorable council of state, in a petition, subscribed by us, which never received any answer, such as might clear the lawfulness of such, his proceedings with us, but an aspersion cast upon us, of being factious fellows. Neither have we received any conviction of our error, in not taking the said oath, nor order, by that power before whom our petition is still *depending*, to take it hereafter. Neither can we believe that the commonwealth of England will ever expose us, to such a manifest and real bondage (who assert themselves the maintainers of the lawful liberties of the subjects), as to make us swear absolute subjection to a government where the ministers of state are bound by oath, to countenance and defend the Roman Popish religion, which we apprehend to be contrary to the fundamental laws of England, the covenant taken in the three kingdoms, and the consciences of true English subjects, and doth carry on an arbitrary power, so as whatever is done by the people, at great costs, in assemblies, for the good of the people, is liable to be made null by the negative voice of his lordship. But affirmative propositions and commands are incessantly urged and *prest*, and must not be denied.

In consideration whereof, we humbly tender our condition and distraction upon this occasion, falling upon the hearts of all the people, to your view and consideration, intreating your honors to relieve us according to the cause and the power wherewith you are intrusted by the commonwealth of England; rather because upon such an exigent as this we have none to *flie* to but yourselves, the honorable commissioners of the commonwealth of England, not doubting but God will direct you into what his hand and will is in this matter concerning us, and that you will faithfully apply yourselves to our redress in what is just and our lawful liberty. Which is the prayer of your poor petitioners.

Swan River, the 30th of Jan'y, 1653.

Subscribed by Edw'd Lloyd and 77 persons of the housekeepers and freemen, inhabitants.

To the Honorable Richard Bennet and William Claiborn, Esquires, Commissioners for the Commonwealth of England within the Bay of Chesapick:

The humble petition of the inhabitants of the Northside of Patuxent river, in the province of Maryland:

That being reduced by your honors from that tyrannical power exercised over the people of this province by the Lord Baltimore and his agents unto the obedience of the commonwealth of England, to which government we have subjected and engaged, and have by your honors been often enjoyned real conformity and obedience to the same, and not to own any other power or authority, as we will answer the contrary: In subjection whereunto we have had peace and freedom hitherto, which with all thankfulness we cannot but acknowledge, and in our contined obedience do expect from the parliament, next under God, continued peace, liberty and protection from the pride, rage and insolency of their and our adversaries.

Now so it is, may it please your honors, that of late the Lord Baltimore doth, by his orders and agents, seek to set over us the old form of government formerly exercised by him in this province, which we did conceive, by the blessing of God upon your honors' endeavors, had been fully made null and void. Yet notwithstanding, by the arbitrariness of his own will, he appoints laws for us, and sets up Popish officers over us, ousting those officers of justice appointed by you; issuing forth writs in his own name, contrary to your honors' order and appointment; and doth by proclamation, under his own hand and in his own name, impose an oath, which if refused by us, after three months, all our lands and plantations are to be seized upon to his lordship's use, and if taken by us we shall be engaged at his will to fight his battles, defend and maintain him in his patent as it was granted to him by the late king, &c.; which oath we humbly conceive is contrary to the liberty and freedom of our consciences as Christians, and contrary to the fundamental laws of England; contrary to the engagement we have taken in subjection to the commonwealth of England, and unsuitable to freemen to own any other power than that to which we belong, and to whom we are and have engaged; and contrary to the Word of God to fight for and defend and maintain Popery and Popish anti-christian government; which we dare not do, unless we should be found traitors to our country, fighters against God, and covenant-breakers.

The premises considered, we humbly spread our condition before your view and consideration, hoping, that as you are commissioners for the commonwealth of England, and that power, which God hath put into your hands, that you will up and be doing, in the name and power of our God, that we be not left, for our faithfulness, as a prey to ungodly and unreasonable men, before we can make our complaint and grievance known to the supreme authority of England; which with all readiness we shall endeavor to do by the first opportunity; and from whom we do hope, and shall expect, by God's blessing, to have a gracious answer and suitable redress. And your petitioners hereunto subscribed shall pray, &c.

Subscribed:

RICHARD PRESTON,
And 60 more of the House-keepers and Freemen.

Dated in Patuxent river, and in the Province of Maryland, the first of March, 1653.

An answer to the petitions lately received from the inhabitants of the rivers Severn and Patuxent:

GENTLEMEN:

We have lately received from you a petition and complaint against the Lord Baltimore, his governor and officers there, who upon pretence of some uncertain papers and *relations* to be sent out of England, but no way certified or authenticated, have presumed to recede from the obedience to the commonwealth of England, to which they were reduced by the parliament commissioners; to the contrary whereof, nothing hath been sent out of England, as far as is yet made appear unto us. But duplicates and confirmations of the commissioners powers and actions were sent from the parliament since the reduction of Virginia and Maryland. Now whereas, you complain of real grievances and oppressions, as also of an imposition of an oath upon you against the liberty of your consciences, which you say you cannot take as Christians or as free subjects of the commonwealth of England. We have thought good to send you this answer. That because we, nor you, have as yet received, or seen, sufficient order or directions from the parliament and State of England, contrary to the

form to which you were reduced and established by the parliament's said commissioners. Therefore we advise and require you, that in no case you depart from the same; but that you continue in your due obedience to the commonwealth of England, in such manner as you and they were then appointed and engaged. And not to be drawn aside from the same upon any pretence of such uncertain relations as we hear are divulged among you. To which we expect your real conformity, as you will answer the contrary, notwithstanding any pretense of power from Lord Baltimore's agents, or any other, whatsoever to the contrary.

Your very loving friends,

RICHARD BENNET.
WM. CLAIBOURN.

VIRGINIA, March the 12, 1654.

A Declaration published in Maryland.

It cannot be unknown to the inhabitants of Maryland, that about two years since, this province was reduced and settled, under the obedience to the commonwealth of England, by the parliament's commissioners sent thither, with special commission and instructions, to that purpose; and that Capt. Wm. Stone, Mr. Thomas Hatton, and others, re-assuming the power and place of governor and council here, undertook and promised to continue, in their said obedience, and to issue out all writs, process and proceedings, in the name of the keepers of the liberty of England, as was commanded by the said instructions by which Maryland was reduced, which said commission and instructions have been since renewed, and the proceedings of the said commissioners, owned by the committee of the Council of State, as by their order and report drawn up for the parliament may appear, wherein the Lord Baltimore's agents are taxed for refusing to issue out writs in the name of the keepers of the liberty of England, notwithstanding all which appearing so clear and evident. The said Capt. Stone and Mr. Hatton, though they continued and exercised the government for some time, and for divers courts, in the name of the keepers of the liberty of England, yet have they since, upon no good ground, falsified their said trust and engagement, though acted pub-

lically and after long advice and consideration; and having rejected and cast off their said obedience to the commonwealth of England, have further refused to govern this province according to the laws of England, but declare and affirm a power and practice contrary thereunto and contrary to the late platform of government of the commonwealth of England, Scotland, and Ireland, and the dominion thereof; as namely, by the governor's negative voice in assemblies, and his choosing and removing counsellors at pleasure, and the like is manifest. And, whereas, we have lately received commands from his highness the lord protector, to publish the said platform of government, and that all writs and proceedings should be issued in the name of his highness, to which, though we desire this government should be conformable, yet the said Capt. Stone and Mr. Hatton, having lately associated unto them divers counsellors, all of the Romanish religion, and excluding others appointed by the parliament's commissioner's, have and do refuse to be obedient to the constitutions thereof, and to the lord protector therein; and have in the name and by special direction of the said Lord Baltimore, made proclamation and exacted an oath of fidelity from all the inhabitants of the province, contrary and inconsistent to the said platform of government; which said oath, nevertheless, and the law here commanding the same, and many other laws, are likewise by the report of the said committee of the council of state declared to be contrary to the laws and statutes of the English nation, which is an express breach of his patent. And, whereas, the said oath in many particulars is *distasted* by all the inhabitants of Maryland, and especially out of tenderness of conscience by all Northern plantations of Patuxent and Severn, who having lately engaged to the parliament of England, do say and declare they cannot take the said oath to the Lord Baltimore to be absolute lord and proprietor of Maryland, and to the utmost of their power to defend and maintain all his rights and royal jurisdictions, perrogatives, dominions, &c. Upon which, their refusal of the said oath, the said Capt. Stone, by the said Lord Baltimore's especial direction, hath set forth a proclamation, declaring: That all such persons, so refusing, shall be forever debarred from any right or claim to the lands they now enjoy and live on; and that the said Capt. Stone, as his lordship's governor, is thereby required to cause the said land to be entred and seized upon to his lordship's use.

By which strange and exhorbant proceedings many great cruelties and mischiefs are likely to be committed, and many hundreds, with

their wives and families, are utterly ruined, as hath been formerly done here and at Kent, though planted before the Lord Baltimore's claim to Maryland, with many murders and illegal executions of men, confiscation of estates and goods, and great miseries sustained by women and orphans. In consideration and just fear whereof, the said planters of Patuxent and Severn have made their often addresses to us, as some of the then commissioners for the reducement of Maryland; and most lamentably complain of the great danger they stand in of being utterly undone, and chiefly for engaging their *fidelitie* to the commonwealth and parliament of England, now devoled to his highness, the lord protector, their obedience and faith to both, being plainly repugnant to each other and inconsistent.

We therefore, the commissioners of the parliament, having written and proposed to the said Captain Stone and that council, for a meeting to procure a right understanding in the matters aforesaid, and to prevent the great inconveniences likely to ensue. In answer thereunto, though they acknowledge our lines peaceable, yet so exulcerated are their minds, that in the very next line they add, we in plain terms say we suppose you to be wolves in sheep's clothing, with many other following like uncivil and uncomely words and expressions.

In contemplation therefore of all the premises we have thought fit to make publication hereof, and to justify and manifest our proceedings in these affairs, lest many people may be ensnared by false and cunning suggestions and pretences as lately hath been practiced herein, the *falsitie* whereof time hath sufficiently demonstrated; and we are ready to give further satisfaction for the truth of any of the particulars before alledged, if any shall desire it, or repair to us to that purpose which they may securely do.

Wherefore we advise, and in the name of his highness the lord protector, require all the inhabitants of this province to take notice of the premises, and to contain and keep themselves in their due obedience under his highness the lord protector of England, Scotland and Ireland and the dominions thereto belonging, of which this is undoubtedly a part and ought to be governed accordingly, whereby they may assure themselves of the peaceable enjoyment of their liberties, profession of their religion, and their estates, and that they shall be protected from wrong and violence in what kind soever.

Hereby also protesting against the said Captain William Stone, Mr. Thomas Hatton, and all others any way confederate or assistant with them in their unlawful practices, that they may be accountable and

answerable to God and the state of England, under his highness the lord protector, for all the mischiefs, damages, losses and disorders that may or shall happen thereby.

RICHARD BENNET,
WILL. CLAIBORNE.

Dated at Patuxent in Maryland, the 15th of July, 1654.

Captain William Stone's Resignation of the Government.

Whereas, since the orders or directions of the commissioners of the state of England for the government of this province of Maryland of the 28th of June, 1652, I, William Stone, Esq., governor of the said province, was enjoyned by the direction and appointment of the right honorable the Lord Baltimore, lord proprietary of the said province, to issue out all writs and processes within this province, in this the said lord proprietarie's name, and to admit of those of the council which were appointed by his lordship, and no other. And whereas, upon my compliance with his lordship's commands therein, not any wayes contradictory, so far as I understand, to any command of *supream* authority in England. The said commissioners in pursuance of their declarations lately here published, have threatened and gone about, by force of arms, to compel me to decline his, the said lord proprietarie's directions and commands before mentioned; which, in regard to the trust reposed in me by his said lordship, as governor here under him, I conceive I was engaged not to do. I have therefore thought fit for prevention of the effusion of blood and ruin of the country and inhabitants by an hostile contest upon this occasion, to lay down my power of governor of this province, under his lordship; and do promise for the future to submit to such government as shall be set over us by the said commissioners in the name and under the authority of his highness the lord protector.

Witness, my hand the 20th of July 1654.

WILLIAM STONE.

In presence of—

THOMAS GERRARD,
THOMAS HATTON,
EDW. SCARBURG.

Order for Settling the Government of Maryland.

Whereas, by several orders drawn up and published at St. Marie's the 29th of March, and the 28th June, 1652, Maryland was reduced and settled under the authority and obedience of the commonwealth of England, as to the government thereof by special order and command of the council of state by commission from the parliament, and was left in the hands of Captain William Stone, Mr. Hatton, and others, who were required and promised to issue out writs and other process in the name of the keepers of the liberty of England, according to the express words of the commission and instructions for reducing, settling and governing of all the plantations in the bay of Chesapiak to the obedience of the commonwealth of England, as in and by the aforesaid orders and proclamation may and doth appear. And whereas the aforesaid Capt. Stone, by special order and directions from the Lord *Baltamore*, as it appeareth, was *perswaded* and induced to go away from the obligation and the trust reposed in him, by issuing forth writs and all other process in the name of the lord proprietary of this province, placing and displacing those of the council, and imposing an oath upon the inhabitants contrary unto and inconsistent with the said engagement and oath to the commonwealth of England, upon the penalty and forfeiture of the lands of all such as should refuse to take the same within three months after publication thereof, which were then to be entered upon and seized to his lordship's use; thereby occasioning great discontent and disturbance among the inhabitants, besides the irregularity and cruelty of the said proceedings, and the opposition, contempt and rebellion therein to the commonwealth of England and his highness the lord protector. And further, whereas by a late proclamation dated the 4th of this month, published in this province, both the commissioners of state and the people who adhered to this engagement to the commonwealth of England and refused to own or acknowledge any other name or authority as to government, or to take any other oath but what they had already taken to that power, were charged; that they drew away the people and led them into faction, sedition and rebellion against the Lord Baltimore; wereby not only the lands and plantations of many hundreds of people, but also their estates and lives were liable to be taken away at the pleasure of the aforesaid Lord Baltimore and his officers. By all which unjust and unreasonable proceedings the people were put

upon the necessity of standing upon their own defence for the vindication of their just rights and liberties and freeing themselves from those great oppressions, whereby the whole province was very much threatened and apparently endangered. For the prevention whereof, and also for the relief of those who were so deeply distressed, and for the settlement of the province in peace and in their due obedience under his highness, the said commissioners, by authority derived unto them from his highnss, the lord protector, applyed themselves unto Capt. William Stone, the governor and the council of Maryland, according to a declaration of the 15th of this month, herewith published, who, returning only opprobious and uncivil language, presently mustered his whole power of men and soldiers in arms, intending to surprise the said commissioners, and, as could be imagined, to destroy all those that had refused the said unlawful oath and only kept themselves in their due obedience to the commonwealth of England, under which they were reduced and settled by the parliament's authority and commission as aforesaid. Then the said commissioners, in peaceable and quiet manner, with some of the people of Patuxent and Severn, went over the river of Patuxent, and there at length received a message from Capt. Stone that the next day they would meet and treat in the woods. And thereupon, being in some fear of a party to come from Virginia, he condescended to lay down his power, lately assumed from the Lord Baltimore, and to submit (as he had once before done) to such government as the commissioners should appoint under his highness the lord protector.

It is therefore ordered and declared by the said commissioners: That for consideration of the peace and public administration of justice within the said province of Maryland, Captain William Fuller, Mr. Richard Preston, Mr. William Durand, Mr. Edw'd Lloyd, Capt. John Smith, Mr. Leonard Strong, Mr. —— Lawson, Mr. John Hatch, Mr. Richard Wells and Mr. Richard Ewen, or any four of them, whereof Captain William Fuller, Mr. Richard Preston, or Mr. William Durand, to be always one, to be commissioners for the well ordering, directing and governing the affairs of Maryland under his highness the lord protector of England, Scotland and Ireland, and the dominions thereof, and in his name only and no other; and to proceed therein as they shall see cause, and as neer as may be according to the laws of England, to appoint and hold courts for the due administration of justice and right, in such places and at such time as they shall think fit and necessary. And any of the commissioners of the quo-

rum to issue forth writs, warrants, subpœnas, &c.; as also that they summon an assembly to begin on the 20th day of October next. For which assembly all such shall be disabled to give any vote, or to be elected members thereof, as have born arms in war against the parliament or do profess the Roman Catholick religion. And the said Mr. William Durand is hereby appointed to be secretary to the said commissioners and to receive the records from Mr. Thomas Hatton, and Capt. John Smith to be sheriff for the ensuing year.

Dated at Patuxent, in the province of Maryland, the 22d of July, 1654.

RICHARD BENNET,
WILLIAM CLAIBORNE.

Cecilius, Lord Baltimore, to all to whom these presents come, greeting: Whereas, our *soverign* lord, the king, by his highness commission, under the great seal of England, bearing date at Oxford, the 28 day of February, now last past, hath authorized Leonard Calvert, Esquire, brother of me, the said Lord Baltimore, to treat, conclude and agree, and which the general assembly of the colony of Virginia, for and concerning the ascertaining and establishing by act of general assembly there, of customs and duties, to be paid to his Majesty, his heirs and successors in Virginia, upon exportation of tobacco and other goods and merchandizes from thence, and upon all other goods and merchandizes brought in and imported there, other than for necessary supply for clothing imported, as by the said commission more at large appeareth. And whereas, by a contract or agreement in writing, bearing date the day of the date of the said commission, made between our *soverign* lord, the king, of the one party, and me, the said Lord Baltimore, on the other party, reciting the said commission hereinbefore recited, our said *soverign* lord, the king, for the considerations in the said contract or agreement expressed, is pleased and hath agreed with me, the said Lord Baltimore, that in case a certainty of customs and duties shall be established by act of general assembly of the said colony of Virginia, according to the tenor of the said commission. That then his said majesty will make a lease, or grant to me, and such others as I shall desire to be joyned with me, of the same customs and duties which shall be established as afore-

said, for such term, and under such rents and covenants as in the same contract or agreement are expressed. And that immediately after the establishing of the said customs and duties as aforesaid, and until such lease or grant shall be made as aforesaid. I, the said Lord Baltimore, and such as I shall appoint, shall be the receiver, or receivers, collector or collectors, of all such customs and duties, as shall be established as aforesaid, to the proper use of the said Lord Baltimore, my executors, administrators and assigns, without accompt, paying certain rents, salaries and entertainments, in the said contract or agreement expressed and mentioned. And his majesty hath, by the same contract or agreement, constituted and ordained me, the said Lord Baltimore, and my deputy or deputies, to be appointed by me, to be his collector and receiver of all customs and duties which shall become due and payable to his majesty as aforesaid as by that part of the said contract or agreement which is remaining with me, the said Lord Baltimore, being under the great seal of England, more at large appeareth. Know ye now, that I the said Lord Baltimore, for divers good causes and considerations me thereunto moving, have substituted, ordained, made and appointed, and by these presents do substitute, ordain, make and appoint , to be my deputy in this behalf, and do by force and vertue of the same contract or agreement, authorize and put the said in my place and stead, and to the use of me, my heirs, executors, administrators and assigns, to receive, collect and gather all such customs and duties whatsoever, as in pursuance of the before recited commission and contract or agreement, shall be established, to be paid to his majesty, his heirs and successors in Virginia aforesaid, by act of general assembly of the said colony, and out of the same to pay and discharge all such rents, salaries and entertainments, as by the said contract or agreement are mentioned to be by me paid and discharged: rendering to me, my executors, administrators and assigns, the overplus or remainder of the same customs and duties; giving and hereby granting unto the said as full power and authority to recover and receive the said customs and duties, to be established as aforesaid, to the use aforesaid, when the same shall grow due. And to give acquittances and receipts for the same, and to substitute and appoint one or more person or persons under him in this behalf, and the same to revoke at his will and pleasure, and to pay and discharge the said salaries and entertainments, as I myself have or may or might claim to have, by force and virtue of the said contract

or agreement ; and further to do, execute and finish all and every such further and other acts and things which shall be expedient and necessary to be done by the said , touching the premises, by reason of his being my deputy as aforesaid, as effectually as I might do the same, being personally present. Ratifying, confirming and allowing all and whatsoever the said shall do or cause to be done in the premises in pursuance hereof.

In witness whereof, I, the said Lord Baltimore, have hereunto put my hand and seal at Arms, the tenth day of April, 1644—Anno Regis. Carols Angl., &c., Vicessimo.

C. BALTERMORE.

Finis.

No. 94. Vol. 61–96.

At the court at Whitehall, November 19, 1675—

Present—The king's most excellent maj'te in council.

Whereas, the ri't hon'ble ye lords of the committee for foreigne plantations, did this day present to his maj'te in council a report touching a grant to be past unto his maj'te subjects of Virginia, in the words following :

May it please yo'r maj'te, the petition of Francis Moupon, Thomas Ludwell and Robert Smith, agents for the governor, council and bugesses of ye county of Virginia and territory of Accomack, being by yo'r maj'te's gracious order in council of the 23d of June last past, referred unto yo'r maj'te's attorney and solicitor generall, who were to consider thereof, as also of a paper annexed, containing more fully the heads of what they humbly proposed, and then to report unto us their opinion on the same as to ye conveniency thereof in respect of yo'r maj'te'e service. And wee having seen and examined the said report bearing date ye 12th instant, are upon the whole matter humbly of opinion that it will not onely be for yo'r maj'te's service, but for ye encrease of ye trade and growth of ye plantations of Virginia, if yo'r maj'te shall be pleased to grant and confirm under yo'r great seale of

England unto yo'r subjects of Virginia the particulars following, as of yo'r maj'te's free grace and goodness to them :

1. That yo'r maj'te will enable ye governor, councill and comonalty of Virginia to purchase the lands, &c., contained in the grant to the earle of St. Albans, Lord Culpeper, and others, and as to that purpose onely, to be made a corporation to purchase and retain the same with a non obstante to ye statute of mortmaine.

2. That ye inhabitants yo'r maj'te's subjects there may have their immediate dependance upon ye crowne of England under ye jurisdiction and rule of such governor as yo'r maj'te, yo'r heires and successors shall appoint.

3. That ye governor for ye tyme being shall be resident in ye country, except ye maj'ie, ye hieres and successors shall at any time command his attendance in England, or elsewhere, in w'ch case a deputy shall be chosen to continue during the absence of such governor, in manner as hath bin used, unlesse ye maj'te shall please to nominate the deputy, who is to be one of ye councill. But if any governor happen to dye, then another to be chosen as hath bin formerly used, to continue till yo'r maj'te, yo'r heires and successors shall appoint a new governor.

4. That no manner of impositions or taxes shall be laid upon or imposed upon ye inhabitants and proprietors there, but by the common consent of ye governer, councill and burgesses, as hath bin heretofore used: provided, that this concession be no barr to any imposition that may be laid by act of parliament here on the *comodities* w'ch come from that country.

5. That yo'r maj'te, yo'r heires, and successors, will not for the future grant any lands in Virginia, under yo'r great seale, without first being informed by ye governor and council there for the tyme being, or some person by them impowered, whether such grant will not be prejudiciall to plantations there.

6. That all lands now possessed by the planters or inhabitants may be confirmed and established to them: provided, it alter not the property of any particular man's interest in any lands there.

7. That for ye encouragement of such of yo'r maj'te's subjects as shall from tyme to tyme go to dwell in ye said plantations, there shall be assigned out of ye lands (not already appropriated) to every persons so coming thither to dwell, fifty acres, according as hath bin used and allowed since the first plantation.

8. That all lands possessed by any subject inhabitating in Virginia,

w'ch have escheated or shall escheat to yo'r maj'te, may be enjoyed by such inhabitant or possessor, he paying two pounds of tobacco composition for every acre, w'ch is the rate in that behalf set by ye governor authorized to do the same by yo'r maj'te's instructions.

9. That ye governor and councill, or a certain quorum of them, may be impowered to try all treasons, murthers, felonies, and other misdemenors, *provided* they proceed in such trials as neer as may be to the lawes of England; the governor to have power of pardoning all crimes unlesse murther and treason, and in these, if he see occasion, to give reprieve until he shall have laid the state of the facts before yo'r maj'te, and received yo'r royal determination therein.

10. That the power and authority of the grand assembly, consisting of a governor, councell and burgesses, may be by yo'r maj'te ratified and confirmed: provided that yo'r maj'te may at yo'r pleasure revoke any law made by them, and that no law so revoked shall, after such revocation and intimation thereof, from hence be further used or observed.

All w'ch is humbly submitted to yo'r maj'tes determination.

Councill Chamber, 19th October, 1675.

His maj'te having considered ye s'd report, and being graciously inclined to favor his s'd subjects of Virginia, and to give y'm all due encouragm't, hath thought fit to approve and confirm ye same. And Mr. Attorney Generall or Mr. Solicitor Generall is hereby required to prepare a bill for his maj'tes signature in order to ye passing of letters patents for ye grant, settlement and confirmation of all things according to ye direction of the said report, but varying ye words and manner of expression so as may be most suitable to ye formes of law in such cases accustomed and to ye pet'rs relief.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 80.

State Papers, Colonial, Virginia, Vol. 59, No. 19. August 3, 1663.

Charles R., trusty and well beloved: We greet you well. Whereas for many good services and other weighty considerations, wee did in the first year of our reigne, by our letters pattent, under the greate seale of England, (since enrolled in our court of chancery,) give and grant unto our rt. trusty and well-beloved Henry, Lord Jermine, now Earl of St. Albans, Ralph Lord Hopton, John Lord Berkeley, Baron of Stratton, Sir William Morton, Knt., one of our sergeants at law, and others, all that tract, territory or portion of land in America, bounded by and within the heads of Tappahannocke als. Rappahannock and Querrough or Potomack rivers, the courses of these rivers and Chesopacka baye, together with the rivers themselves, and all the islands within the banks of the s'd rivers, as in and by the s'd letters pattents doth or may more at large appeare, which by reason of the late unhappy and unsettled times they could not plant or enjoy, according to our royall intention. And whereas the said Earl of St. Albans, Ld. Berkeley, Sr. William Morton, and our servant, John Fretheroy, assignee of the s'd Ld. Hopton, (being the serviving patentees and parties interested,) have lately, since our restoration to our rights and governm't, granted and demised to our trusty and well-beloved, Sr. Humfry Hooke, Knt., John Fitzherbert, Esq're, and Robert Vicarridge, merchant, the s'd tract or territory, for a certaine number of yeares. To the intent the same may be planted and the Christian faith there propagated, and that our said pattentees, and their leassees and agents, may be by you and our councell of Virginia, protected and incouraged without any intention of withdrawing the s'd plantation from under your protection. Wee have already signified unto you by our l't'rs, under our signe manuall, bearing date at Whitehall, ye 5th day of Dec'ber last past, our will and pleasure, that from time to time you should bee ayding and assisting to such persons as should bee employed by our s'd patentees and parties interested, or their s'd leassees, or any of them, for settling of the s'd plantation, and receiving the rents, issues and profits thereof, may enjoy the benefit intended to them by our s'd l't'rs patents. And whereas wee are induced to believe that our s'd l't'rs under our signe manuall have miscarried, and not come to your handes, for that (as wee are informed) you have lately obstructed the proceedings upon our

s'd l't'rs pattents, and have not permitted the persons employed by the s'd leassees, to act in pursuance or according to the tenor thereof. And forasmuch as the same were granted to persons of honour and meritt. And for that their survivors and assignee have by their lease, as afores'd, impowered our trusty and well-beloved Sr. Humfry Hooke, Knt., and other persons of good worth, interest and quality, who in all probability, (if not interupted,) will in a short time settle that plantation for the advantage of trade and *comerce*, and to ye satisfaction of all the familyes that are there already planted. And will likewise cause townes to bee built, and courts to be erected, according to our s'd l'tres patent, for the ease and benefit of the inhabitants, and doe w'soever in reason may promote our service and the good and wellfar of our subjects in those parts. (The generality of our city of Bristol being, as we are informed, engaged w'th the s'd leassees in yt designe. Wee have therefore thought fit hereby to let you know that it is our royall will and pleasure, that you not only forbeare to give any further interruption, but also upon sight hereof, restore our s'd l'tres patents unto the person or persons employed by the s'd Sr. Humfry Hooke and the other leasses, (being informed that you detaine the same.) And likewise that you assist and protect them from time to time in carrying on that work. And that you give such encouragement to them and their agents as may bee for the advancement of the s'd colony, and answer our expectation therein. Wee desiring nothing more then what may conduce to the good of our people inhabiting in the s'd colony, w'ch wee conceive will bee much furthered by that course that our s'd patentees have taken for the setling of the s'd *plantation* in the s'd territory. And herein wee expect yo'r obedience to our comands. Neither wee intending, nor our s'd patentees desiring to w'thdraw the s'd colony from under your governm't or appeale. And soe wee bid you farewell. Given at our court at Whitehall, ye 3rd day of August, 1663, in ye 15th yeare of our reigne.

By his Ma'ties comand.

HENRY BENNET.

Our trusty and wellbeloved the governor and councell of our plantation of Virginia.

Inforcem't of a former L'tre to ye Governor of Virginia.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

June 27th, 1871.

A copy of my field notes for the survey of Rapp river from Meratico creek to Charles's Beaver dam to the latitude of 38° 19′ N.

Surveyed by

THO. BARBER,
Survey'r of Richmond county.

Monday, ye 30th of May, 1737.

Began at ye mouth of Meratico creek, observation over the creek is S. 74°, E. to ⊕ N. 38°, E. 52 per.; thence S. 58°, E. to ye ⊕, distance across ye river is S. 75°, W. to ⊕ N. 20°, W. along ye river shore 280 per.; then S. 50°, W. to ye ⊕; thence along ye river N. 52°, W. 74 per., N. 78°, W. 128 per. to Capt. Griffin's landing, N. 49°, W. 48 per., N. 34°, W. 80 per., N. 25°, W. 66 per., N. 18°, W. 70 per. to ye mouth of Farnham creek, distance across N. 56°, W. to ⊕ N. 7°, E. 32 per., N. 77°, W. to ⊕ on ye west side the creek; thence S. 74°, W. 232 per.; N. 72°, W. 60 per.; No. 54°, W. 190 per. to Mr. Peachey's creek, N. 31°, W. 120 per. to Mr. Tho. Plummer's landing, N. 40°, W. 144 per. to Jackman's creek; thence N. 68°, W. 140 per. Mr. Suggett's bar, distance is S. 52°, W. to ⊕ N. 14°, W. 224 per. S. 32°, W. to ⊕ N. 14°, W. 6 per. N. 31°, W. 92 per.; N. 58°, W. 158 per to Naylor's now Breastindines' point; thence N. 5°, E. 154 per.; N. 28°, E. 32 per. to ye mouth of Richardson's creek, distance across N. 16°, W. to ⊕; thence N. 66, E. 30 per.; N. 34°, W. to ⊕; thence N. 45°, W. 108 per. to ye mouth of Totuskey creek, distance across is N. 6, W. to ⊕; thence N. 46, E. 40 per.; then N. 36, W. to ⊕, N. 75°, W. 174 per.; N. 64°, W. 44 per.; N. 87°, W. 126 per. to Accotink point, distance over ye river is S. 35°, W. to ⊕; thence S. 87°, E. 126 per.; thence S. 48°, to ⊖; thence N. 25°, E. 8 per. N. 1°, E. 84 per. to a small creek by Capt. Tomlin's; N. 1°, E. 46 per.; No. 13°, E. 68 per.; N. 4°, W. 120 per., N. 37°, W. 188 per., N. 21°, W.

58 per., N. 34°, W. 228 per. to Rust's creek, distance over ye river is S. 35°, W. to ⊕ N. 52°, W. 238 per.; thence S. 7°, W. to ⊕ N. 32 per., N. 56, W. 80 per. to Mangoright creek, the bearings of which is N. 31°, W.; thence over ye creek and up ye river S. 67°, W. 86 per. to a cove; thence S. 69, W. 60 per., N. 87° W. 58 per. to ye point of marsh, distance is S. 62°, W. to ⊕ N. 35° 320 per.; thence S. 19°, W. to ⊕ S. 87°, W. 110 per., N. 84°, W. 162 per. to a point, distance to hobshole is N. 86, W. to ⊕ N. 15°, W. 126 per., S. 77° W. to ⊕; thence N. 41°, W. 128 per., N. 18°, W. 136 per. to island in the marsh, N. 47°, W. 162 per., N. 26°, E. 200 per. to ye main land; thence N. 11°, W. 240 per. Rapp's creek, distance is W. to ⊕ N. 31°, W. 28 per. to ⊕; thence N. 45°, W. 116, N. 31°, W. 32 per. to Mr. Wm. Fauntleroy inr's, N. 27, W. 200 per. to a small creek N. 69°, W. 106 per. to Mr. William Fauntleroy landing, S. 88°, W. 126 per. N. 83°, W. 208 per. to the point of marsh, distance across ye river is S. 71°, W. to ⊕ N. 20°, W. 188 per.; thence S. 41°, 30, W. to ⊕ N. 5°, E. 284 per.; distance is N. 74°, W. N. 11°, W. 206 per.; thence S. 77°, W. to ⊕, distance to Payne's island creek, is — N. 75°, W. to ⊕ N. 42°, W. 38 per., N. 11°, W. 152 per., S. 78°, W. to ⊕ N. 3°, E. 50 per. to ye of ye marsh, N. 14°, W. 210 per., N. 1°, W. 166 per., N. 11°, W. 144 per. to the upper end Churchwell's clift, N. 22°, E. 22 per., N. 21°, 36 per., N. 46, W. 40 per., N. 17°, W. 304 per. to the end of Fauntleroy clift; thence N. 3°, W. 20 per., N. 22°, W. 154 per., N. 45°, W. 42 per., Dancing point; thence N. 24°, W. 34 per., N. 44°, W. 46 per.; distance over the river is S. 57°, W. to ⊕, N. 58°, W. 90 per.; thence S. 6, E. to ⊕; thence N. 35°, W. 24 per. to ye Beaver dam creek, the bredth of is 4 per.

The distance from the upper end of the clift to the wreck of a boat where Mr. Warren began is N. 66°, W. to ⊕ N. 1°, E. 14 per.; thence N. 87°, W. to ye ⊕ at ye wreck.

Surveyed by

THO. BARBER, S. R. C.

State Papers—Colonial Entry Book—vol. 52, p. 221—March 12, 1691.

Trusty and wel-beloved, wee greet you well :

We have been informed by your letter of the eleaventh day of July last that you had received our royall commands, bearing date the first day of February, 1689, and given due obedience thereinto; and having since heard what your deeputies and agents have offered to us, we have thought fitt to take our province of Maryland under our immediate care and protection; and by letters pattents, under the great seal of England, to appoint our trusty and wel-beloved Lionel Copley, Esq'r, to whose prudence and loyalty we are well assured, to be our governor thereof, untill whose arriwall we do hereby authorize and impower you to continue in our name the administration of the government and preservation of the peace and property of our subjecks there. Willing and requiring you to take care that one moiety of the impost of two shillings for every hhd of tobacco exported from our said province be colleck'd for the use and support of our government there, and to permit the duty of fourteen pence p. tun, and the other moiety of the said import of five shillings p. hhd to be collected and received for the use of the Lord Baltemore as proprietary of our said province, by such as shall be appointed by him to collect and to receive the same. We have been likewise informed by the representations that have been transmitted to us of the murder of our late collector, and accordingly directed some time past our ld. governor and councill of our colony and dominion of Virginia, to do all that in them lay for bringing the offenders to speedy justice, within our province of Maryland, if the fact should appear to have been comitted there, and in that case to take care that such of the criminals as should be found within that our colony should be forthwith conveyed in safe custody to and said province, there to receive a speedy tryall, and so we bid you farewell. From our court, at Whitehall, the twelfth day of March, 169$\frac{0}{1}$, in the third year of our reign.

By her ma'ts' command.

MOTTINGHAM.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

Articles of Agreement between Philip Calvert, Esq., Chancellor of Maryland, deputed by the Honorable, the Governor of the said Province, to treat and conclude upon the Bounds of the said Province, and Col. Edmund Scarbrough, his Majesty's Surveyor General of Virginia, authorized and commanded to lay out the Bounds of Virginia:

1. Imprimis. It is agreed that all persons who have surveyed or patented and seated lands on the seaboard side, in the right of Virginia, and now fallen within the divisional line, shall enjoy their said lands, they taking a patent from the lord proprietary of Maryland, and within seven years entering rights in the said province, and paying the half fees to the surveyor general and full fees to the secretary and chancellor.

2. Item. All such as have already patented any lands in right of Virginia in any other place within the line aforesaid, which is not also patented in Maryland, shall have the privilege in the foregoing article allowed, upon such terms as in the said article is expressed.

3. Item. All such who have patented and seated lands in right of Virginia which do fall within the line aforesaid and are patented likewise in Maryland, but not seated in the same right, shall enjoy the same, unless it can be proved they have seated the said lands in defiance and despite of the said gov't after warning given, provided they take patents, enter rights and pay fees as in the first article is agreed.

4. Item. If any land shall chance to be patented only in right of Virginia, for which there is also a patent in Maryland, the patent in Maryland shall carry the land.

In witness whereof, the said Philip Calvert and Edmund Scarbrough have hereunto set their hands, the 25th day of June, 1668.

(Signed) PHILIP CALVERT,
EDMUND SCARBOROUGH.

Whereas his royal majesty's commission to the surveyor general of Virginia commands setting out the bounds of Virginia with reference to his majesty's hon'ble governor and council of Virginia from time to time to give, advise and order for directing the said surveyor general to do his duty appertaining to his office, in order thereunto his

majesty's hon'ble governor and council have by letter moved the hon'ble, the Lord Baltimore's lieu. general of Maryland to appoint some fitting person to meet upon the place called Watkins point with the surveyor general of Virginia, and thence to run the divisional line to the ocean sea, &c.; the Hon'ble Philip Calvert, Esq., chancellor of Maryland, being fully empowered by the hon'ble lieutenant general of Maryland, and Edmund Scarborough, his majesty's surveyor general of Virginia, after a full and perfect view taken of the point of land made by the North side of Pocomoke bay and South side of Annamessex bay have and do conclude the same to be Watkins point, from which said point, so called, we have run an East line agreeable with the extremest part of the Westermost angle of the said Watkins point over Pocomoke river to the land near Robert Holston's, and there have marked certain trees, which are so continued by an East line running over Swansecute creek into the marsh of the seaside, with apparent marks and boundaries; which, by our mutual agreement, according to the qualifications aforesaid, are to be received as the bounds of Virginia and Maryland on the Eastern shore of Chesapeake bay.

In confirmation of which concurrence, have set to our hands and seals, the 25th day of June, 1668.

(Signed) PHILIP CALVERT. [Seal.]
EDMUND SCARBOROUGH. [Seal.]

State of Maryland, Baltimore city:

I hereby certify that the above and foregoing two papers headed Articles of Agreement, &c., the first signed Philip Calvert and Edmund Scarborough, and the other signed Philip Calvert, seal, and Edmund Scarborough, seal, are truly copied from pages 62, 63, and 64, inclusive, of a bound manuscript volume labelled No. 4 state papers—Council Book, 1669, 1673—Maryland Historical Society, now in possession of the commissioners on the part of Maryland to adjust and settle the Maryland and Virginia boundary line, and belonging to the archives of the state of Maryland.

LEVIN L. WATERS,
Sec. of Joint Comm'n.

No. 137.

State Papers—Colonial—Vol. 43, No. 240.

Mem'd. Concerning Maryland.

Virginia, first so called, is a tract of land lying from 45 to 34 deg. N. lat. 1607 King James granted letters pat't to Sr. Thomas Yates, &c., for planting this tract of land called Virginia. Which was thereupon divided into two colonies, the one lying from 34 to the 40 deg., the other from the 40 to 45 deg'r. The charter granted for the first colony as above said (after the peopling and planting of that whole country), was aftewards vacated by a quo warr'to in the year 1623. Whereupon, in 1632, Cecil Lord Baltimore, upon suggestions that there was a certain tract of land in America not inhabited by Christians (as appears by the preamble), obtained that charter whereby Maryland is now held, and for the possessing himself thereof used great violence in driving away such of the people out of that part formerly called Virginia as would not submit to his authority ; wherein sev'll of his maj'tes subjects were slain, as appears by the notice taken thereof by his maj'tes late letter to the Lord Baltimore.

Endorsed :

Mem'd Concern. Maryland.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

DEPOSITIONS.

At a meeting of the commissioners of Maryland and Virginia to settle the boundary between those two states, at the Cone hotel in Crisfield, May 27th, 1872, the following depositions were taken by the commissioners and duly sworn to:

Travis Sterling first called and absent.

Deposition of Isaac Sterling.

Mr. Isaac Sterling examined by Mr. Jones.

Age 81 last August; lived in Annamessex all my life—down below. His father Henry, and his grandfather John Stirling has been on Watts island, on Tangier and Fox island, and on the marshes between here and Cedar straits, and has fished all around the island pretty much from boyhood up. There are large pine stumps, and many of them around and between the said islands; off West Point at Fox island is full of stumps; there are large stumps all over the marsh between here and Cedar straits, especially at Broad creek at a place called the Prong; there are large pine trees lying there now, from which I have picked off oysters My grandfather told me there was once a considerable island where I am told the middle ground now is in Pocomoke sound. At the N. headland of Little Annamessex on James island; I, in my day, have gathered peaches from high land, near where the outer lighthouse now stands at the Little Annamessex bar. I was fishing with Nathaniel Bradshaw and old Capt. John Cullen; this was a long time ago, say 50 odd years ago.

Cross-examined by Mr. Wise.

Born near Pocomoke sound, 1½ or 2 miles from here, between Jenkins creek and Apes hole. Hans Lawson's father, James Lawson, lived on the West of my birth-place. His land extended to Jenkins creek, which empties into Little Annamessex. Old Mr. Littleton Tylor and Tommy Nelson lived lower down South, near Pocomoke. This Tommy Nelson was called by the nick-name of Old King Nelson; he lived at a place called Matthews creek; nobody lives there now. Tommy or King Nelson's father was named Sacker or Zacker Nelson. He, King Nelson, was very old when he died. Michael Somers, I believe, pretends to own the land where King Nelson lived. King Nelson left children; three of his sons are dead, leaving children; they live now in this neighborhood. He has children living, William, daughters Nancy and Betsy; these three all who are living; he left a number of grandchildren, who are now living in this neighbourhood. Never knew the main land at Cedar straits to be connected with Fox island. Fox islands were the North Fox island, Big Fox island, the Muddy marsh, and there is another across the Big Thoroughfare; the Big Thoroughfare is between the South Fox island and Watts island. Vessels have always at high tide been able to sail between Watts island and Fox island; at high water, going into and out of the Pocomoke and Tangier sounds. Ephraim Sterling lived East of the place where I was born when I can first remember. The next family East of the Pocomoke or Ape's hole side was old Mr. Jacob Bird; and those were the only families living on the sound when I can first remember. These lived near the mouth of Ape's hole. Old Uncle Travis Sterling lived a little higher up, I mean a little off the sound on the land. The peach orchard of which I spoke at the N. headland of Annamessex, was not on an island, but was a point running out from the high land of James island.

(Signed), ISAAC STERLING.

Deposition of McKenny Tawes.

Mr. McKeney Taws was next sworn and examined.

He stated: I am in my 77th year of age; shall be 77 next Xmass; very deaf; my wife is a daughter of Thomas, called old King Nelson;

has heard King Nelson say that his father, Sacker Nelson, lived on Fox island; they burned his house during the revolutionary war. John Mason bo't from Sacker Nelson, and Middleton Mason, his son, lived there until within a few years past; Thos. and John Crocket bo't it, and Tommy and Planner Crocket live there now; was told Tommy was dead; heard King Nelson say that when they lived there their well on Fox island was one hundred and fifty yards out in the sound; don't know his age when he died; heard him say he had eaten peaches at the N headland of Little Annamessex, near where the outer light-house now stands; have heard there was an earthwork for a battery on the old island at said point, which I have seen myself (Jones island); it is now all washed away; I knew when there was a small ridge of land, but never knew wheat to grow there myself, but have heard of it from the old folks; no recollection of hearing King Nelson say anythings of the washing away of land between Fox island and Watts island. My wife is still living, and I have heard her say that she was born down here on the marsh where Billy Lawson lived—now vacant; she was born on the hammock between Soners cave and Jenkins creek; it is about 3 miles from that hammock to Cedar straits; it is a good big marsh; I don't know who claims this marsh now; Isaac Lawson, nicknamed Jenafer, bought the hammock between Soners cave and Jenkins creek, and how much of the marsh he bought I can't tell; he bought it not over 3 or 4 years ago; he bought it of old Billy Lawson's heirs; old Billy bought it of Elijah Purit; I don't know who he got it from. Middleton Mason moved from Fox island to Onancock, in Accomack, and there I don't know what become of him.

(Signed) McKENNY his ⋈ mark. TAWES.

[Marked seperately by the clerk, John Mawbray, and Mr. Wise.]

Deposition of Abraham Somers.

Mr. Abraham Somers was next affirmed and examined.

I am very deaf, my name is Abraham Somers, and my age tradition says is 79; I was born in 1793; I was born in Delaware; came here when quite a baby—moved here; was acquainted with old King Nelson, lived near him; about three-quarters of a mile say; don't

recollect how long he has been dead ; have heard him mention the line of Virginia and Maryland ; he showed me the tree on Smiths island that was a mark of the line from Smiths point. Have been on Smiths island, but the tree was cut down before I first went there ; I could see it when standing from King Nelson's house ; it was said to be a gum, and stood in Butler Tyler's yard ; it is not washed away, and the land is there now ; don't know but the stump is there now ; he said it ran by Watkins point. Butler Tyler I did not know, but I knew David Tyler, his brother ; and I knew a daughter of Butler Tyler name Nancy ; the two brothers lived close together. King Nelson showed me the tree, and told me it was a line. This was said by King Nelson to be a mark of the line from Smith point to Watkins point.

his

(Signed) ABRAHAM ⋈ SOMERS.

mark.

Deposition of John Cullen.

Mr. John Cullen was next sworn and examined.

I was 79 years of age the 13th May present this month ; was born in Annamessex, where Hans Lawson, the father of James, and grandfather of Hans Lawson, lived ; have lived there as my home all my life when at home, but have been a great deal from home. I knew King Tommy Nelson ; can't say when ; but think he died about 1854 or 1855. Have heard him say that his father, Sacker Nelson, told him that he had seen the time when he could have taken a fence rail and have reached across all the break-throughs, and have walked across them all between Fox's islands and Watts' island. I never heard King Nelson point out any line across Tangier sound between Maryland and Virginia ; but once when I was at John Nelson's, and when the coast survey had its sites or signals set up, he pointed to one on Fox island, and said that was near where the line of Maryland and Virginia passed. It appeared to be pretty much on the west point of Fox's island, near, I presume, where a pine with a round top stands ; there was but one tree. Never heard him say more about the line. Was never on Smiths island but twice ; only in harbor. Was with Jno. S. Handy and Henry Thomas to lay off the first election district laid off on that island by Maryland. (Here a memo-

randum of the record of the time was shown him by Mr. Jones, in June, 1835.) Don't recollect the bounds laid off. Soloman Evans, Thomas Tyler and another old Mr. Evans described where the line was; I went with them to the church; they were notified that we were going on, and we met there at the church. Then I asked them to give me the line between Virginia and Maryland, and we made the return according to the information they gave us. They told me that John Tyler, who lived at Horse hammock, lived in Maryland, and we made our report on the verbal descriptions of the persons whom we examined. We did not go to Horse hammock, or to any point, but took the description at the church, and they all told me that John Tyler lived at Horse hammock, and I thought, and we all thought, that Horse hammock was "Drum point." Never had the line pointed out to me at any other time, and thought the line across the sound commenced at Horse hammock, and never had any point shown me on their side of the sound for the course of the line between the two States. I arrested a vessel in 1851, called the Fashion, belonging to Severn Tyler, and John Tyler was on board as captain. Saw her dredging off the mouth of Little Annamessex, west of that mouth, at a rock called Filly's rock, northeast of the Great or Big oyster rock—the largest rock in the sound. We did not arrest her at Filly's rock, but we were coming up the channel of the Tangier sound, and the boats saw us and became suspicious of our intent, they bore down the sound in a southwest direction, as if he wanted to get to Horse hammock, which was John Tyler's house. From where we saw him dredging he ran about two miles before we arrested the vessel. At the point where the arrest was made he was, I suppose, in Virginia waters. There were witnesses in the case of Severn Tyler vs. me, examined as to where the line of Virginia and Maryland was—Thomas Tyler being examined. I don't know whether Hoffman was sworn. T. Tyler said that there was a cedar standing on the East side of Smiths island, but that the marsh, or point, where the cedar stood, was all washed away. That he and others went down on that side where he understood the cedar had stood, and he waded in and searched until he found some roots; he pulled up the roots and carried them to the shore, and told them to examine them and see whether that was not cedar, and it was pronounced to be cedar, and he cited from where the cedar was and said the boat had been arrested in Virginia waters. I asked how it was, that when we laid off the election district that he said Horse hammock was in Maryland, and he made me no

answer, but turned away and would not answer. He was father of Severn Tyler, and grandfather of John, the captain. I think that no witnesses were examined on my part in the case of Severn Tyler vs. me (I am the same man, John Cullen, against whom the judgment was had,) respecting the line of the two States.

Examined by Mr. Wise.

I was absent much from home, having for many years been a seafaring man; and all that I know about the line between Maryland and Virginia, either of my own knowledge or by tradition, I have stated. I think it was in 1853 or 1854, when King Nelson told me what his father told him about the state of the waters at the break through between Fox island and Watts island. Then at the time when he so told me the space between Fox island and Watts island, was all broken through. The space is about five miles; I had known that space ever since I was 15 or 16 years old; it has been 40 years since I was at Fox or Watts islands either, but I think they have washed away a great deal. I have not been there, at either Fox or Watts islands, for 40 years. I was acquainted with Watts island from the time I was 16 years of age until about forty years ago. I knew Watts island from about 1809 to about 1832; the last time I was there, about 1832, it had washed away about 75 yards in front of the house where old Bob Parker had a wharf; I think the high land had washed from 70 to 80 yards, the N. end of the island had washed away a good deal; I cannot tell how much Fox islands have washed away in the 23 years from 1809 to 1832. I think the south end of S. Fox island had washed away from 40 to 50 yards. The small island just off the N. end of Big Watts island, had washed away but very little. The westernmost point of the north end creek had washed away very much; there were two break throughs at the westernmost point and one at the easternmost point of N. end, which had washed a great deal. When King Nelson informed me, as I have stated, about these waters between Fox and Watts islands in 1854, I do not know how long before his father, Sacker Nelson, had died; I never knew Sacker Nelson; I know Josiah Parker, the son of Robert Parker, now living; I believe his age is about 82; he is my father's half brother, and I have not visited him for forty years, nor has he me in that time. In all my time I have never known Fox island to be connected with the main; I don't now know, and never did know, Fox island well. When I first

knew them there were first the N. island called Green harbor; 2d, going S. Maggatty hammack, next Doe's hammack, next Slip ledge, next the Long ledge, next the Round ledge, and these were the Eastern hammocks of Fox islands; and then on the west of the groupe is Big Fox island; and then is a little island between the two thoroughfares, and now I am told Big Fox island is cut in two by a break through, and there is Muddy marsh to the east of the lower Fox island. There were three muddy marshes, but there is but one now; I never knew of an island in Pocomoke sound called Georges island. There is what is called the middle ground, a sand bar over which a canoe cannot pass at low water. When King Nelson showed me where the line of the two states passed on Fox island, I think was in 1853 or 1854. If I have been understood as saying that King Nelson in 1853 or 1854, I think, when the coast surveyors had erected signals along the Eastern coast of the Tangier sound, that he actually pointed to or actually showed me any signal on Fox island; I did not mean to be so understood, but I mean to say that he told me that a signal which was on Fox island, was near the line of Virginia. He did not point to any signal on Fox island or show it to me, but I had seen one there, and we were talking about it, and he said it was near the Virginia line. It was on the northermost one of the groupe of Fox islands; I never knew otherwise than this that the signal there was near the Virginia line. Of my own knowledge, I never knew where the Virginia line was; I had my ideas of it from hearing that there was a direct line from Smiths point to Chincoteague. I do not say that that line would cut any part of Smiths island, and I don't think it would. I laid off the line of the election district on Smiths island in 1835, leaving a part of said island in Virginia, because the men on the island told where they understood it to be. The one tree which was standing then on Fox island, was on the northermost island of the Fox island groupe. If there is but one tree of a large size standing on Fox islands, it must be on the northernmost island, and on the north end of the northermost island. I do not know whether there is any tree at all now on the northernmost island. If there is one large tree now standing on Big Fox island too large, and too old to have grown there since 1853 or 1854, it must have been there in 1853 or 1854. I never knew of any mark, tree or other mark of boundary between Maryland and Virginia on either of the Fox islands, or on the main land near Cedar straits. I was never informed of any such mark other than as I have described, or as related to me

by King Nelson. I never looked for any mark at the place where I saw the signal of the coast survey talked about by King Nelson and myself. The copy of the report signed and sealed by John S. Handy, John Cullen and Henry Thomas, dated 16th June, 1835, made by them to the levy court of Summerset county, describing the limits of the election district then laid off on Smiths island, has been read to me, and it seems to be a correct copy of the report made by me and the other two commissioners.

The report referred to above is as follows:

"Commission from the of Summerset (county) to John S. Handy, John Cullen and Henry Thomas, of Summerset county, in the State of Maryland, to lay off so much of Smiths Island as lies within the body of Summerset county aforesaid into a separate and additional District," before the 1st August, 1835. Commission dated 1st April, 1835. Return dated 16th June, 1835:

"In pursuance of the said order we have reviewed, laid out, and return as follows for said election district, to-wit: Beginning on the East side of said island at a place well known by the name of 'Drum point'; thence Westerly cross to the bay to a hammock called Sassafras, lying on the bay shore; thence by and with the bay up to Kedge's straits; thence by and with the sound to 'Drum point' to the beginning. And that we at the same time have elected the Methodist meeting-house as the most suitable and convenient place of holding the elections in said district.

"In witness, &c., June 16th, 1835.

"(Signed) JOHN S. HANDY. [Seal.]
JOHN CULLEN. [Seal.]
HENRY THOMAS. [Seal.]"

When I seized the Fashion in 1851 I thought the Big Oyster rock was in Maryland. When I seized the Fashion, running from Fillby's rock in a S. W. course, and as I thought towards Horse hammock, the then residence of John Tyler. I seized her at the North end or uppermost part of the Big rock. When I seized her there I thought at that time that she was in Maryland. In the civil case of Severn Tyler against me for seizing the Fashion there, the verdict and the

judgment were decided against me, and I had to pay the damage which was assessed against me. The damage was ass'ed against me for the damage and detention of the vessel and the witnesses who were sworn for the plaintiff; I did not mean them who put the value on the damages done to the vessel. Thomas Tyler, in the trial of the case of Severn Tyler vs. me, swore that the cedar described by him stood some distance North of Horse hammock. From that point above Horse hammock he sighted across the sound and said the vessel was in Virginia; he did not say to what point he sighted. He, Thos. Tyler, was not examined as witness in the case of Severn Tyler ag'st me. He testified in the case prosecuted by the state of Maryland against the vessel, and stated what he did about the cedar. When the vessel was cleared from the prosecution by the state, then Severn Tyler sued me about a year afterwards, and recovered verdict and judgment against me, and Thomas Tyler was not examined in that case. Thomas Tyler did not admit, when I asked him how he came to tell me that Horse hammock was in Maryland when the commissioners laid off the election district on Smiths island, that he had told me so, but walked away and made me no answer. He did not deny it, nor did he admit.

Re-examined by Mr. Jones.

According to my recollection, the verdict and judgment which were rendered in the case of Severn Tyler against me, in the civil suit for damage and detention of the vessel, were rendered by consent. Mr. Crisfield, the commissioner for S. Tyler, came to me and said my case was a good one for the legislature, and urged me to compromise; that he would do all he could for me. My counsel, Judge Tingle, coming together with Mr. Crisfield, also advised the same course. I recollect of no witnesses being examined, except about the damages to the vessel. I recollect of no witnesses being examined about the detention of the vessel, and of no witnesses being examined except Southey Miles. There were no witnesses examined as to whether the vessel was seized in Maryland or Virginia, and none as to whether the vessel was dredging in the waters of Virginia or Maryland—none according to my recollection. But witnesses were examined in the previous case of The State of Maryland vs. The Fashion; and I was myself examined in those cases, and stated what I have stated here, that she was seen by me to be dredging on Fillby's rock, and was seized by me

on the upper part of Big rock, and the vessel was acquitted or cleared of violating the laws of Maryland by dredging in her waters. By the line spoken of by me as the line which I thought was the line of Virginia and Maryland, running from Smiths point to Chingoteague, I meant Chingoteague island.

(Signed) JOHN CULLEN.

Deposition of Benjamine Langford.

Mr. Benjamine Langford was next sworn and examined :

I am now 72 years old; I was born in Annamessex, about 4 miles East of this place, near where I now reside; and I now reside right on the Pocomoke sound, about ¾ of a mile from the shore; I live on the tract known and called Kirk's purchase. (Here the witness produced a paper purporting to be an extract from Leten No. 14, folio 265 or 261, stating that the grant of Kirk's purchase, dated 10th May, 1671, lying near "Watkin his point," as shown by the copy hereto annexed.) The tract of land called Watkins point, lies on the East side of Apes Hole creek, near to the mouth of it—once called Johnstons creek; have never heard any tradition of any line from Tangier sound across this peninsula to Pocomoke river; never until Lee came here to run a line; I heard they were running a sort of a promiscuous line from Worcester county through here, but I never knew what line they run, nor where they made it.

Examined by Mr. Wise.

I have heard of no line except what I have learned from books—from Jefferson's Notes of Virginia and from McMahon, John V. L. McMahon's History—and he says about the same thing; that a line run from Cinquack to Watkins point, and where Watkins point is I never knowed. I don't think I ever heard of any tradition about a line run by Philip Calvert and Edmund Scarburgh. I did not know of that line, but I may have heard of it. I had read John V. L. McMahon's History of Maryland before Lee run the line which he run. I read part of it, but never read it through in my life. Have heard of a man named Kilby; believe he was a lawyer; I have heard so, but never heard any more about him. I don't know where I got the tradition of the Calvert and Scarborough line.

(Signed) BENJAMINE LAUTEFORD.

In pursuance of adjournment at the Cave hotel, Crisfield, May 27th inst., the commissioners met at Horse hammock May 28th inst., and finding they had no one competent to administer an oath, they sent to Crisfield to procure a J. P. or N. Pub., and met again at the house of Johnson Evans, at Horse hammock, May 29th inst., and proceeded to examine other witnesses as to the boundary of Maryland and Virginia on Smiths island—

Present—Thos. K. Wh———, J. P. of the State of Maryland, Hon. I. D. Jones, and W. J. Aydelotte, commissioners of Maryland; Hon. D. C. DeJarnette, Wm. Watts, and Henry A. Wise, commissioners of Virginia. May 29th, 1872.

Deposition of John Marshall.

John Marshall was first sworn and examined:

I am going in my 63d year ever since the 19th of the present month of May; I was born on Sykes island; I came to Smiths island to reside when I was about 17 years of age, and have resided on Smiths island ever since. I have known the greater part of the old inhabitants of Smiths island ever since; I knew Tommy Tyler, William Tyler, Elijah Evans, John Parks, John Evans, and I knew Jacob Bradshaw and Solomon Evans at Kedges straits, and Hampton Bradshaw and Littleton Bradshaw his brother, and others, and all these and other old people are now dead except Mrs. Vina Bradshaw, the widow of Jacob. The oldest man now living is Teakle Evans, who is, I think close by 80 or 85 years of age, and the next oldest man is Capt. Ephraim Tyler, who keeps the Fog Point lighthouse; and the oldest of the junior generation are Hainey Bradshaw, Severn Bradshaw, Francis Evans, Mrs. Maria Gray, and myself and others. I was shown what was said to be the line between Virginia and Maryland on Smiths island, say from 15 to 20 years ago, by old Mr. William Tyler, when he and I were alone; he showed me a boundary stone from three quarters of a mile to a mile north of Horse hammock, where Johnson Evans now resides, and where old Capt. Peter Evans lived at that time; he told me that it had (was) been fixed there for the boundary stone between the two States of Maryland and Virginia; he told me that he was carried to that stone and whipped by his grandfather, I think named Butler Tyler, to the best of my knowledge, and that he was whipped there to make him remember that it was a boundary stone between the two States. This was about 15 or 20 years ago; the stone has not been moved to my knowledge since, but the ice may have moved it

two or three feet, but I do not know that it has moved it, and if it has moved it I would say that from my knowledge of the movements of the ice that it has moved to the south if it has moved at all. I was first called to notice the stone in 1851 when the case of John Tyler vs. the State of Maryland was tried before the Circuit court of Summerset county, in the State of Maryland, in the year 1851. This case involved the schooner Fashion, of which Severn Tyler was owner and John Tyler was captain, for dredging oysters in the waters of Maryland contrary to her laws; witnesses were examined in the trial of that case as to where the line of Virginia and Maryland ran across the Tangier sound; I was examined myself as a witness in the case, and I heard the examination of other witnesses in the case; the vessel I saw seized, and she was taken by John Cullen, I know not by what authority, on the Westward side of the great rock; that rock lies about from East to S. East from Horse hammock, this house; I did not see her in the act of dredging; that rock is a very large rock; it lies north of the present Davidson & Lovett line; I mean it is a large oyster rock, called the Great rock; I don't think any portion of that rock lies North of an East line from the stone described by me; I have never been called to note that stone since, until called upon by Mr. Aydelotte and Mr. Wise, here present, in 1871; at that time I showed that stone to these two commissioners, and to Capt. Browne and Drummond and others; the same stone which I showed to them then at the same place, I went to on Friday last and saw it removed from its place, lying on the edge of the marsh, and a stake sticking in the place whence it was removed. Acccording to what I heard Mr. John W. Tyler testify in the aforesaid case in 1851, I have no doubt that stone was a boundary stone between the two states; he testified in court that he was carried to that stone as a boundary stone and whipped severely to make him remember it as a boundary. Mr. Thomas Tyler also testified that he was carried to the stone and "ducked" to make him remember it as a boundary. Mr. John Tyler also testified that he was carried to it and whipped at the same time; these were all who testified about the stone at that trial, and they are all three dead; Mr. Wm. Tyler died about three years ago, and I am told his age then was about 80; Mr. Thomas Tyler died, I am told, about 1864, and his age on his tombstone is marked 91 years, so that he was about 78 years of age at the time he testified in said case; John Tyler died, I am told, 17 years ago last September; I don't know his age when he died, but am told he was between 60 and 70 years of

age, so that he must have been about 61 when he testified; William Tyler was the son of David Tyler; Thomas Tyler was the father of David; and William Tyler and Thomas were both sons of David, whose father was Thomas Tyler. John Tyler is said to have been the father of the last named Thomas Tyler, who was the oldest Tyler I have ever heard of. Thos. Tyler, the son of John the elder, lived, I am told, at the Home place, on Drum Point, and that place has been as long I have known it in the Tyler family, until purchased by my son, John Wesley Marshall, and others, in 1866. I know of but one "Drum point" on Smiths island, but am told there are two. I remember there is a Drum point two or three miles North of this on the N. East coast of Smiths island, but that point is not the "Drum point" which I mean as the home place of the Tylers. Where Wm. Tyler lived was called "Drum point," and where Thomas Tyler lived was called "Black Walnut point." These two points were adjoining lands one to the other. Benjamine Bradshaw lives on "Drum point," also William Evans, also Wm. Snead Bradshaw, also Stuart Evans; and John W. Marshall, my son, lives on Black Walnut. These two points are near the middle of an East and West line across Smiths island. This Drum point is not far off from Tylers ditch; and on Sabbath last Mr. Ephraim Tyler, the keeper of the lighthouse at Fogs point at the N. end of Smiths island, told me that he could not be here to testify, but sent word by me to the commissioners that the line between the two states, as he was told by old Mr. Butler Tyler, his grandfather, I think, ran right through the yard of the home place, between the kitchen and the house, at Black Walnut point. I I don't know who Butler Tyler was; I am told that he was the elder brother of David Tyler. There are two ditches or canals called Tylers ditch or canal—one runs by Black Walnut point, and is the Northern one; and the other I never heard called Tylers ditch until I heard the deed read from Elisha Crocket and wife to Richard and William Evans. Always before I had heard it called Parkers ditch. The one North of this I had always before heard called Tylers ditch. The Southern ditch cuts South point marshes, and how far these marshes run North I don't know. I own half of South marsh now; my son a small part or share in it. We hold up to Parks ditch. Nobody lives near it on South point. The marshes West of South point are called Hog neck; North of Shanks marshes, which are the Southern part of Smiths island. A house is now standing on Hog neck where I am told that the runaway marriages took place to and from Maryland and Vir-

ginia. The house is standing, but the kitchen is down. I was told by old uncle John Parker, who was a very old man, and owned the place, that when couples ran away from Maryland to be married in Virginia, they were married in the kitchen, and when they ran away from Virginia to be married in Maryland, they were married in the dwelling house. Mr. John Tyler now lives in the dwelling house, and I can now come pretty near where the kitchen stood. I have known old John Nelson, who was the son of old Tommy Nelson, called King Nelson. John Nelson's children have always, as far as I know and as long as I have known them, always lived on the lower part of Little Annamessex. I mean between Tangier and Pocomoke sounds, and South of Little Annamessex. They lived higher up a great deal than Cedar straits. I live on Shanks island, and have paid taxes in Accomack county, Virginia, ever since I have lived on Smiths island. I first settled on South Point island, close up to Drum point, where Benjamine Bradshaw now lives—the creek just separated us—a mile more or less apart; and then, as well as now, I always paid taxes in Virginia. I have never known the time when Foxs islands were joined to the main land North, and I have never heard of any such fact; and when I first came to Smiths island I came through Cedar straits in a canoe and flat sloop, and have known it ever since, having been through them, I suppose, one hundred times. I have also known what they told me were Foxs islands. There is a neck of land between Big Fox island and the main. It is an island now, but whether it has been artificially cut through or not I do not know. The passage between Watts island and Foxs islands has always, in my recollection, been open to vessels of 6 feet draft and a little over. I have gone through there myself in a loaded vessel drawing 6 feet water. I think it is not more than three miles from the lowest Foxs island to Watts island, and I have never heard of any tradition stating that there was ever a time when one, with the aid of a fence rail, could walk from Foxs islands to Watts island. I don't know where Cow ridge is, except what I have been told—that it is where Severn Bradshaw now present lives, lying South of the Thoroughfare on Smiths island. The Thoroughfare runs right by it. His house is not more than one hundred yards from his landing on the Thoroughfare. I do not myself know of any place on Smiths island called Home hammock, but have heard of a place called Oak hammock, where Aleck Tyler now lives. I know where old man John Parker lived. He is now dead. He lived from 2 to 3 miles South of the North Tyler ditch, which cuts through

into the Thoroughfare. John Parks' land was conveyed over some twenty years ago to John Hoffman, who removed to Pongoteague creek, in Accomack county, Virginia, and he sold the same land to John and Severn Tyler. John is here at this home now, and lives now in Hogs neck, on the same. They tell me that 900 acres of the land was recorded in Accomack county, Virginia, and the balance was recorded in Somerset county, Maryland. I have never paid taxes in Maryland on land or other property, or for any purpose whatever. Old William Tyler told me that when Peter Evans lived here at this place of Johnston Evans, called Horse hammock, he, William Tyler, always paid the taxes assessed in Virginia at Drummon town, and Peter Evans (who was my brother-in-law) paid him, William Tyler.

Examined by Mr. Jones.

To prevent misunderstanding of what I have heretofore said, I will now state that my meaning as to the line when I first knew of the stone spoken of by me, was to say that I first knew of this stone 15 or 20 years before I was examined in 1851 in the case of John Tyler vs. The State of Maryland, about the "Fashion." I now say that I was first told of this stone by Wm. Tyler about the time of my first coming to Smiths island. I was never told by Mr. Wm. Tyler anything about a cedar near the stone; and if he so stated in court, I never heard him, or don't recollect it. I never heard anything of a bounder but a stone, and nothing in the trial of the case of the Fashion about a cedar; if anything was said about a cedar I don't recollect it, and was not present all the time of the trial—nor anything of a cedar stump or root that I recollect. Nobody from the island (Smiths) testified about the line of the two States but the three Tyler's. Peter Evans lived here at this place called Horse hammock many years—say 25 years or more ago. He bought it from old Mr. Wm. Tyler, and Alcey, his wife, for mortgage debt, and sold it to John W. Marsh, who now lives on Chesconessex creek, in Accomack county, Virginia, I think, but I do not know; that the deeds from Wm. Tyler to Peter Evans were recorded in Accomack county, Virginia.

(Here Mr. Jones read to witness an extract from a deed to Peter Evans by Wm. Tyler, and Alcey, his wife, dated 2d October, 1842, and also a deed from Peter Evans, and Triffeny, his wife, to John W. March, dated 3d October, 1857, both deeds recorded in Somerset county, Md., and both deeds conveying a tract of land called Horse

hammock, and reciting metes and bounds thereof, as in Somerset county, Md., and beginning at a well known bounder stone lying at the sound side, about three-quarters of a mile to the North of Horse hammock, as shown by copies hereto annexed as exhibits.)

Has no recollection of any processioners coming on here to procession lands on Smiths island from Virginia, and the officers of Virginia have always neglected to come on here for any purpose except when they wanted us to vote. I have never known a sheriff to come on here to collect taxes. They give in our lists themselves, and make us pay what they charge, and make us go to the main land. I have always paid in Virginia, and never to any officer of Virginia on Smiths island. I have always voted in Virginia, except one time, and that was when I lived up on South point, and then I did'nt know in which State I lived, and voted in both States. I pay the oyster tax in Virginia. Many of the people on Smiths island pay the tax on the oyster license in both States. Capt. Browne has granted licenses, I believe, to people on the island, clean up to Kedges straits. In 1833 I lived on South point, and voted for Mr. Wise, here present, for congress, and voted for him up to February, 1844, when he left the house of representatives of the congress of the United States. Mr. Jones was elected in the adjoining district in Maryland in 1841, 1842 and 1843. I never voted for Mr. Jones, but did vote for Mr. Wise in 1841 and in 1843, for the reason that I was in Virginia and I lived on South point, Smiths island.

his
(Signed) JOHN ⋈ MARSHALL.
mark.

Deposition of James T. Evans.

James T. Evans was next called, sworn, and examined by Mr. Wise:

My age is 59; I live close to the place where I was born, on the same tract called "North End." That place is very near a gum, about two miles North of this, close on the Thoroughfare. I took out my vessel license in Virginia at Drummontown until the custom-house was changed to Cherrystone. I was well acquainted with old Tommy, called King Nelson, and with old Job Parks, called Joby, two of the oldest men I remember of ever knowing I think they said Tommy Nelson was 105 years old, and Job Parks was a little older. They told me that they hope run this line between Virginia and Maryland, and carried the chain. They said they went to Ragged point on the

Potomac river and run a Southeast course five miles below Point Lookout, down the Potomac until they got North of Smiths point; from that five-mile point they struck an East course across Chesapeake bay to Mister's thoroughfare to a gum tree, and from the gum tree to Beaver hammock, and put a stone there on Beaver hammock between two cedars, and dents of the stumps are there now, and so is the stone there on Beaver hammock; and thence to a point called the Barn, where also they placed a stone, which is said to be there; and then an East course to Jones' island, where they said a peach orchard stood, leaving a part of Jones island on each side of the line; and now I can't saw whether they said they ran an East or Easterly course from that point to Pitts creek on the Pocomoke river. They said they brought the stones from Potomac river which they placed as above stated. I have seen the gum tree of which I speak, and recollect it well; that tree stood on the South side of Misters thoroughfare. Beyond Pitts creek they did not say anything about running the line. Besides this tradition there were other traditions about where the line was: Some said it was at Old Hein island channel; some said it was up as high as Frogs island in the Thoroughfare, and some said as high as Kedges straits. I was once a pilot with Blount, the coast surveyor, about 16 or 17 years ago. He settled a large cedar bounder about ten paces on the sandshore at Ragged point on the South side of the Potomac, and I believe that post is still there, it was put down so very deep; I can't say how deep. The gum spoken of was on the land of Marmaduke Mister, and is now Severn Bradshaw's land. The cedar post at Ragged point was put on the land of Mr. Bouie, whose first name I don't recollect. Mr. Blount exactly agreed with the statements of Tommy Nelson and Job Parks as to the line as far as Pitts creek. Mr. Nelson told me about this line when I lived at Jones island, about 36 years ago, counting by my children. Then I moved from Jones island to the upper house on Tangier island about 28 years ago, and Job Parks and I became acquainted after I moved to Tangier, and he told me this about the same time—28 years ago; he lived on Tangier, and is the father of Stephen Parks, now living. Both Nelson and Parks stated that when the line was run there were a number of officers and other persons engaged in the work, and they had barges, &c., with them. I was told by them separately and apart from each other, a long way apart, and at different times, and they agreed with each other. I have seen the stone at Beaver hammock, between the two cedar stumps, when it was

in one piece; it is now in two pieces; I can't say how big it was, but according to my recollection, and that of others, it weighed about a ton; when I saw it on the bank before it went down the bank it looked almost white, showing plainly from afar. There came a very hard freize about 1832—I know by the death of William Tyler—and a heavy storm, which cut the ice under the stone and drove it out, and the stone was afterwards found in the water in two pieces. Beaver hammock is where you found the stone, below Troy island from a third to a half mile. Nelson and Parker mentioned no other bounders of state, and no other marks of the line to Pitts creek, that I remember. I have heard old Mr. Johnny Parker say, the same who lived where John Tyler does, that the line went between her great house and kitchen; and Butler Tyler always said it went through his yard, between his two houses, dwelling and kitchen; and Marmaduke Mister said it was not so; it went to the gum, for he saw Nelson and Parks when they helped to carry the chain.

Examined by Mr. Jones and Written by Mr. Watts.

Job Parker told me he thought he was over a hundred years old, and was something older than Tommy Nelson; they said they helped to run this line soon after the Revolutionary war; Tommy Nelson, at the time he told me, lived on Jenkins creek; we were out fishing when he told me; he said they commenced the line on the Potomac at Ragged point; they ran Southeast until they got five miles below Point Lookout, and then East to the * * * * * * Job Parks said he was pressed by the British and kept until the year 1780; he made his escape and got to Drals island, and worked across Maudkin sound, through Flat Cap shore; then travelled down to Cedar straits, and then started across Tangier sound upon the ice to go to Tangier; he came to an air hole, or streak, and jumped, fell, and slided across, and got to Tangier; in the spring he went into the American troops and served till peace, and he and Tommy Nelson were in the same brigade; they helped in this survey before they were discharged from the army; Tommy Nelson told me he volunteered in the war and served till peace; did not tell me how old he was at the commencement of the Revolution; he must have been full grown; they both told me they were soldiers in the service, and were employed in running the line spoken of before they were discharged, after peace was proclaimed—1783; I can't say whether or not they stated that they carried the

chain all the way to Pitts creek; they stated that they carried it across Smiths island, and did not tell me that either of them was discharged from the service survey before they got to Pitts creek; I take it that they did go to Pitts creek. When I was employed with Blunt he was engaged in putting out buoys; he said the line he ran was the boundary between Maryland and Virginia; I can't say positively, but I think that Job Parks and Tommy Nelson had told me of the line before I was with Blunt; I have no education, and can neither read or write; I know where Queen's ridge is on Tangier island; I know of no other place of that name; Piney island is N. East of Queen's ridge; I know Rich hammock, which lies North of Piney island; old Hern island is a little South of East from the North of Shanks creek, on Smiths island.

[Here Mr. Wise read a copy of a commonwealth grant, signed by Beverly Randolf, Governor of the commonwealth of Virginia, granting to Richard Evans forty-seven acres of land lying in the county of Accomack, Virginia, twenty-seven (27) acres thereof called Queen's ridge, described by course and distances; also, five acres thereof called Piney island, described by course and distance; also, seven acres, another part thereof called Rich hammock, described by course and distance; also, eight acres, the residue thereof, call Old Hern island, and described by course and distance. Sealed with the lesser seal of the said commonwealth on the 31st day of October, A. D., 1791, and of the commonwealth the sixteenth, and certified by William P. M. Kellam, Register of the Land Office of Virginia, which copy is herewith filed as a part of this deposition, marked XX.]

(Signed,) his JAMES T. ⋈ EVANS. mark.

Deposition of David Tyler.

Mr. David Tyler was next called, sworn and examined:

I am 53 years old 29th April, 1872; born in 1819. I reside now on the North end of Smiths island, not far—a mile say—from Fog's point. I was born and raised on the land where Thomas Tyler, my father lived, and resided there until I was 29 years of age. My father was the brother of Wm. Tyler, and they were the sons of David, who was the son of Thomas Tyler, who was the son of John Tyler, the first of whom I know anything, who came from England, and where he settled I don't know, but presume he settled on this island. David

Tyler died, I think, when I was four years old. My father died in 1864, and Wm. Tyler died in 1868. They thought there was a line across the lower part of this island. They lived on a piece of land where their father and old Butler Tyler, their uncle, lived. Butler owned all the land, I am told, at Drum and Black Walnut point. He was the eldest male heir under the English law, and becoming infirm, he sold the whole of his land to his brother David. David had seven children—Thomas, John, Nolly and Severn, William, Zipporah and Ann, naming them as their ages run. Benjamin Bradshaw, Wm. Evans, of James, W. S. Bradshaw, Stuart H. Evans, are all who are living at Drum point, and Thos. Bradshaw, Jno. Wesley Marshall, Peter J. Marshal, Ben. Marsh and John H. Bradshaw, live at Black Walnut point. The home of Butler Tyler, who owned all the land, was at Black Walnut point. I have heard my father, Thomas Tyler, say that the line run west from this piece of rock above Horse hammock, more than a half a mile across the island. I have seen that rock two or three times—it is out of the passway a little. I have known that rock to be there 20 years, I know. It was never moved within my knowledge since I first saw it I heard them talk about it, and went and saw it. The old man William Tyler said that he was whipped there when a small boy to make him remember it was a boundary between the two States, I think, but not sure. It was, I understood from them both, that it was a S. E. corner, a portion of the Pitcraft pattent, and also a bounder of this land.

Examined by Mr. Jones.

The same stone has been taken and held as the beginning boundary of this tract of land called Horse hammock. John Tyler, my uncle, lived here. He died in 1834. Peter Evans bought it under a mortgage deed from John Tyler to William Tyler. I was but a small boy, and know but little of business matters of that time. I cannot say when that stone was first called a bounder of this place called Horse hammock. My father lived here more than 54 years ago—he removed from here about 1818, I think, and as I have heard, and he always held the stone as the beginning of this land called Horse hammock. I wrote one deed from Peter Evans and wife to John W. Marsh, recorded at Princes Ann, Maryland, in 1857, and the other was from J. W. Evans and his wife, to his father, Johnson Evans, in the year 1872, recorded I don't know where. I never examined any other

deeds for this land. When Wm. Tyler gave Peter Evans the deed, there was right smart dispute about where it ought to be recorded; Evans wanted it recorded in both States. Tyler told him that was unnecessary, and it was recorded in Princess Anne; and Evans got a copy and carried it to Drummontown, the C. H. of Accomack, and had it recorded there. I have no knowledge of where any deeds for this place, called Horse hammock, prior to this deed, were recorded. John Tyler was a justice of the peace for the State of Maryland before 1830, when he lived here. I never heard either my father or uncle William say this house, called Horse hammock, was in Maryland, but acted as if it was. My father thought it was in Virginia, and I heard a strong argument between him and James Hoffman about where the line was. Hoffman insisting that all Smiths island was in Maryland, down nearly to Old Hern island, and my father contending a part of Smiths island was in Virginia. My father thought that boundary stone I have named, north of this house, was on the line between the two States. My uncle William thought that the deed to Peter Evans was sufficient to be recorded in Maryland, and refused to give another deed, and Evans had the copy recorded in Virginia. I never put the quantity of land by naming the number of acres in the deed I wrote. The persons residing in this house, within my recollection, I have known to vote in Maryland, and they send their children to the free schools of Summerset county. Four years ago a public road was laid out from this to the church on this island, as a county road of Summerset county, Maryland, built at the expense of that county, costing about $1,300. I have no knowledge of the manner and cause of appointing my uncle a J. P. of Maryland. There had to be two justices of the peace on the island to certify deeds, and I believe my uncle and Solomon Evans were appointed at the same time. Solomon Evans lived at the very North part of Smiths island. I never knew justices to be appointed on this island before. James Hoffman was elected a justice for Maryland in 1853, and served two years. He lived where John Tyler now lives, on Hog Neck; and there is a piece of land South of where John Tyler lives, conveyed by Hoffman, or his son, to W. D. Bradshaw. I think I wrote the deed and took the acknowledgment, but I don't know where it was recorded.

Here Mr. Jones produced a copy of a deed, dated 11th day of May, 1872, from J. W. Evans and Polly, his wife, to Johnson Evans, de-

scribing the land as situated in Summerset county, written by the witness, as an exhibit.

The witness then added that the stone mentioned in this affidavit is the same mentioned in this deed.

(Signed) DAVID TYLER.

Deposition of Severn Bradshaw.

Severn Bradshaw was next called, sworn and examined :

I am in my 63d year of age; residing on Smiths island, at the thoroughfare, called Misters thoroughfare, and state that I heard my father, Jacob Bradshaw, who was in his 63d year when he died, say that he had always heard that when the old line between Virginia and Maryland was run, the persons who run it shaped their course across the Chesapeake bay for a gum tree, which was standing then about 125 yards South of my house, where I now live, on the Orchard ridge. I don't think it has been exceeding 25 years, if that, since that tree died. I had children then—when it died—pretty well grown. It was a large white gum, 2½ feet in diamater, I think, though I never measured it; and it was a very high tree, and bushed off in two prongs to it, and covered a half acre by its top when in leaf, and died, I think, of old age. The body was hollow. The stump is mostly gone, but some of it is still to be seen above the ground, but the roots are there and you can see the bigness of the tree. The line, it was said, ran so near the Thoroughfare that they came through the Thoroughfare and then came down it and took that tree as the mark, which they thought near enough. I have heard of a stone in the Thoroughfare—I cannot say how long ago, but a good while ago—but never saw it until last year. It lays about ten or twelve yards, I suppose, from the shore, in two pieces, five or six feet apart, and about one hundred yards to the South of Beaver Hammock point. From what I have heard from the old people on this island, and from the size of the stone, I believe positively that it was put there for a boundary mark between the two states of Maryland and Virginia. When old King Nelson, who died about 20 years ago, once came over to this island from Annamessex—he was at Ben. Evans' house at North End—he conversed about the line of Virginia and Maryland, and said that, in his opinion, that Misters thoroughfare was the line, and that the church stood, he thought, in Virginia. He did not speak of the white gum, nor did he say what was the course from Thoroughfare. He told me—the same

summer the year he died—maybe the year before—that he thought his age was about 100 years. His reputed father was Sacker Nelson. I have heard my father say so. He and his descendants lived ever since I could remember on Jenkins creek, at Little Annamessex. Henry Bradshaw and Henry Dies know of this stone. I was the rise of 40 years old when I heard King Nelson say what I have stated. When I first heard of the gum tree being the line from my father's, I suppose I was ten or twelve years old. My father died in 1843, 29 years ago. David Tyler, when owning Horse hammock, sent down to Tangier island to bring up Thomas Crocket to ascertain where the Virginia line was, and when he came, Thomas Bradshaw and Littleton Bradshaw went with Thos. Crocket and David Tyler to where the stone is now, ¾ of a mile North of Horse hammock, which has been removed and uplaid by these commissioners; and Thomas Crocket said that he was willing to make oath, to the best of his knowledge, that he stood within ten feet of the line of the state. There was no stone there then; and then, David Tyler afterwards had the stone put where Thomas Crocket said the line was. I was at the court of Princess Anne when two vessels, one named Amelia Ann—and the other, the Ediston, one belonging to John Marshall, and the other to Tubman Evans—were tried for dredging in the Maryland waters; and I heard Thomas Tyler testify in court on the trial of those two vessels, and he said that his father at one time, in that day, owned Horse hammock, and he wanted to know where his bounds were, and he sent for Thomas Crocket, as I have described. The trial of these two vessels were some 4 or 5 years before the trial of the Fashion, and were condemned, but I don't know where they were charged with dredging at. I believe the large stone in the Thoroughfare was put there, from what I have heard and from the size of the stone, to mark the boundary line between the states of Maryland and Virginia. I have heard of another stone on the East side of this island, at about 100 yards this side of Barn point, but I have never seen it. I think the West side of this island has not washed more than 70 or 80 yards since the war of 1812.

Examined by Mr. Jones.

I have heard of several lines between Maryland and Virginia across Smiths island, but have known of but two—those two which I have described were the only ones on which I have seen stone boundaries. The distance North and South between the two lines—the one in the

Thoroughfare, and the other described by me—are, I don't think, more than 1½ miles. I don't mean that distance from stone to stone, but the distance from the line of latitude of the one to that of the other is about 1½ miles, I think, without having measured. I never heard Tommy Nelson at any time say that he had ever been in a survey at any time on Smiths island.

(Signed) SEVERN BRADSHAW.

CRISFIELD, May 30th, A. D. 1872.

The com'rs, pursuant to adjournment, met their meeting at the house of Johnson Evans, at Horse hammock, on yesterday, Wednesday, the 29th inst., met this day at the telegraph and railroad office in Crisfield, at 10 o'clock, A. M., and proceeded to take the depositions as follows:

Present—Thos. K. Whalton, justice of the peace for the state of Maryland, and county of Summerset, and Hon. Isaac D. Jones and Wm. J. Aydelotte, on the part of Maryland; and the Hon. D. C. Dejarnette, Col. Wm. Watts and Henry A. Wise, on the part of Virginia, commissioners:

Deposition of Capt. Wm. Sterling.

Capt. Wm. Stirling was first called, sworn and examined:

I was 61 years of age the 30th day of Nov'r last; I was born at the old Stirling place in Little Annamessex, and have lived there and near there ever since. I own land on the Westward side of Ape's Hole creek, and on the East side of the road leading from Crisfield or from the Ashbury church to the hole, down to the hole. I am the son of John Stirling, and his father was named Travis Stirling, and his father was named John Stirling, I think, but am not positive. I recollect my grandfather Travis very well, having lived with him until he died; he was 85 when he died, and has been dead forty-five years; I was about 16 years old when he died. He said he had always lived on Little Annamessex; I have heard him speak often about the condition of the island from Cedar straits to Watts island, especially of the middle marshes. He said that they were once an island, and also the

middle ground was an island; neither was an island in my recollection, both being washed away before my memory. I don't recollect anything he said about the other islands of the Fox islands groupe, but I know myself that they have washed away a good deal in my remembrance. Cedar straits have not widened much, if any, in my remembrance, as there is but little tide through them. The Fox islands have washed away some good deal, I can't say how much on the West side, and about the same on the East side. I have been familiar with the waters of the coast of Fox islands, and between them and Watts island from my early boyhood. All on the West side of Fox islands there are numerous stumps, I can't say how large; and on the middle marsh bar between Fox and Watts islands, I have often fished and found large stumps. The shoals in 3 and 4 and five feet water have stumps, but there are none in the channels which in some places in the North end is 15 feet water. I think it is all of that but never measured, and in the middle channel there is not so much depth of water, but it is 10 or 12 feet through. I know that Watts island is a great deal smaller on the Eastern side, being exposed to the Northeast winds. I think on that side next the house it must have washed away in my recollection 50 yards; there is no washing on the North end of Fox islands. There is a little island on the North end of Watts island, which has been there ever since I can remember, and may have washed away a little, but not much, if any. I never took much notice of the South end of the Fox islands. The south end of the Big Watts island has washed considerably; there is a thoroughfare between Big and Little Watts islands which, I think, makes that wash, as there is considerable tide there. Old Robert Parker married my grandfather's sister, sister of Travis Sterling, and was my grandaunt. I was then about 3 years of age.

Examined by Mr. Wise.

I did not see the line run some years ago by Lieut. Michler, or Gen'l Michler, but am informed and believe that it passed the house of a colored man, named Severn Sterling, from a quarter to a half mile of my store

Examined by Mr. Aydelotte.

I never searched for any such marks of the line between the two states West of the Pocomoke river to the Tangier sound, and I have never heard of any.

Examined by Mr. Wise.

I never searched for any such marks, and I don't know of any person who ever did; and I know of no tradition of any line or mark of a line run from Tangier sound across the land and Pocomoke river. I don't recollect of ever hearing of a line run by Scarbroug and Calvert across the land from ——— to Pocomoke river; and I don't recollect of conversing with Mr. Wise here present in the fall of 1871, about the line run by Scarbrough and Calvert, but I did converse with him then about the line run by Michler. I never heard of any line run by the two states North of Cedar straits, but all that I ever heard from the old people was of a line through Cedar straits, and I don't know what course it is said to have run from the straits; I do know Pitts creek, and have been past it, and I have always been told that it was in Virginia, but whether it is or not, I don't know; I never landed at Pitts creek, but it is on the left bank of the Pocomoke river. I think that Pitts creek is Northeast from Cedar straits.

Re-examined by Mr. Jones.

When I first knew Cherrystone creek, in the county of Northampton, the Eastern bar at the mouth was all fast land, and now it is all washed away except an island below the woods.

(Signed) WM. STERLING.

Deposition of Michael Somers.

Mr. Michael Somers was next called, sworn and examined:

I was 60 years old the 24th of this month; I was born in Little Annamessex, on a tract called Cherry Hinton, and have resided there until some ten years ago, and then moved Eastward near Apes Hole creek, on a tract of land called "Frustration"; Cherry Hinton, nearly all of which I own, extends Westward as far as the pattent in your hands will show; and the copy of the patent certificate by the register of the Land office of Maryland, exhibited herewith the 20th day of April, 1682, for a part of a warrent to Colonel William Stevens, of Summerset county, in the province of Maryland, for 10,000 acres of land, dated the 1st day of March, 1680, describing the land called

Cherrystone as lying between Annamessex river and Pocomoke bay for 150 acres, a copy of which is hereto annexed; then, also, a like copy of the land called Frustration—40 acres assigned to Francis Martin by Wm. Whittington out of a warrant for 2,700 acres to said Whittington, warrant dated 20th October, 1694, and the pattent dated 10th March, 1695, describing a neck of land lying between Poconoke bay and Annamessex river, and near to Watkins point, as shown by the copy of the copy hereto annexed; Frustration extends to Apes Hole creek; I have never run or seen run the line of Frustration, but I have always heard that it ran to Apes Hole creek, and not to the bay of Pocomoke; the course from my house to Pocomoke bay is Southeast and East; I think that an East line from my house would strike Sykes island; I live a half of a mile South of Lawson Shells, where stands a wind-mill, and Lawson Stone's house stands on the broad water of Apes Hole creek; the owners of the lands West of Cherry Hinton are first Mrs. Cullen, who lives on a place called Stirling's Good Luck; it belonged to my father; and there are Hamilton Moore's heirs, Mrs. Mason, a widow, and William Tyler, and that is about all except the old Tyler family, the heirs of Littleton Tyler, West and Southwest; they live, I think, on a tract called Price's Vineyard, but of that I am not certain; East of Cherry Hinton is a marsh where nobody lives; I own a part of it; Travis Sterling owned a part of it; it is called Cedar hammock, and belongs, I suppose, to his heirs; I own Oak hammock, a part of it; also Lapland, a part of that marsh; that marsh extends down to Pocomoke bay; the other lands don't extend to Pocomoke bay; it is all marsh on the Pocomoke bay; there is a tract of land called Watkins point N. East from where I live, and on the East side of Apes Hole creek, which I have understood was formerly called Johnson's creek; I don't know the names of other lands further East on the Pocomoke bay; I have never heard of any tradition of any line having been actually run by any surveyor across the lower part of Summerset county between Tangier sound and the right bank of the Pocomoke river, before that run by Lieut. Michler a few years ago, say in 1859; that line struck my house on Jones island, and that house stood on a sand beach always called Old Island beach, now known as Riggin's island; the lighthouse now stands on the end of the sand bar which makes out from that sand beach, immediately on the North point of the mouth of Little Annamessex river.

Examined by Mr. Wise.

I have heard of a line between the states of Virginia and Maryland which ran through Watkins point, but whether the tract of land which is mentioned in the pattent before (mentioned) referred to called Watkines point is the point through which the state divisional line passes or not I do not know. I have heard of a line which calls for Watkins point. I don't know on which sound—Pocomoke or Tangier sound—it was located; but certainly it was the general opinion with us that it was the point on Pocomoke sound. I had heard of no other Watkinses point; that is all the reason that I had for believing that was the point called for by the divisional line. I never knew any mark to be placed on that tract of land called Watkins point on the Pocomoke sound as and for a divisional line between the two states, and I have never heard any tradition of a mark or survey being made on that tract of land for such a line, except as I have stated that I had heard of a state line that was run, or was to have been run, to and from Watkins point. I don't know what the size of that tract is, but the pattent exhibited will show. Abraham Somers was my father, and further back I don't know. The name was sometimes spelt *Summers*. I spell my name *Somers*. Horsey Somers, of Accomack county, Va., was own cousin to my father.

(Signed) MICHAEL SOMERS.

Deposition of Hance Lawson.

Mr. Hance Lawson was next called, sworn, and examined:

Examined by Mr. Jones.

I was 47 years of age the 31st last October; was born on a tract of land called Hill's Folly, between Little Annamessex river and Pocomoke bay. I now reside at the same place, within 200 yards of where I was born. I own part of a tract called Bay-bush Hall; and part of a tract called "Agreement" joins Hill's Folly on the N. E., and Bay-bush adjoins the same on the South. Some of Littleton Tyler's heirs, and heirs of Hamilton Moore, and David Bird, and Thomas Bird, and widow Mason, and lots of others, live at Bay-bush Hall, and not on Price's Vineyard, as Mr. Somers supposed.

[Here Mr. Jones exhibited a certificate from the land office of M'd, signed by Geo. W. Brewer, register of the land office of the , for a tract of land called Hill's Folly, surveyed for John Hill the 18th day of August, 1672, and patented to him the 24th day June, 1673; a copy of which is hereto annexed as an exhibit. It calls for one hundred and fifty acres on Back creek, near the mouth of Little Annamessex river.]

Mr. Lawson continued and said: This creek was called Back creek in the patent, and now is called Jenkins creek.

[Mr. Jones then presented a copy of a patent for a place called Bay-bush Hall, containing one hundred acres, dated 6th April, 1682; warrant for 10,000 acres, as already stated, and herewith exhibited.]

Mr. Lawson stated that this patent was for the Bay-bush already mentioned by him.

[Mr. Jones then presented a certificate of a survey dated 1st June, 1683, and patented 1st day of June, 1685, for a place called Mickle Meadow, 300 acres; a copy of which is herewith exhibited.]

Mr. Lawson stated that he knew of a Mickle Meadow which he believed to be that of this pattent, adjoining on the South side of Baybush Hall, and is South side of the mouth of Back creek, now called Jennings creek. The Cedar straits have been washed away considerably in my recollection on both sides; I mean the straits have widened—say, as near as I can, 50 yards, more or less. The Little and Big Thoroughfares, between Fox island and Watts island, have widened considerably in my memory; I have not been there for over two years; the Little has widened less than the Great Thoroughfare. After passing Cedar island marsh we come to Cedar straits; then to a point of marsh which is now an island, that was formerly attached to Big Fox island; then to Little Thoroughfare; then to an island which was called, I think, Little Fox island; then to the Great Thoroughfare; then to an island of marsh, the name of which I don't know; it may have been Little Fox island, I don't know; then the marsh continues, so that I cannot describe the islands of marsh and the little thoroughfares I don't know how far. But from the last island of marsh to Watts island is a considerable sheet of water—two miles wide, more or less. In which sheet I do not know whether there is an island or not, but do not think there is an island; and in this sheet of water is the Middle channel and the North channel from Tangier to Pocomoke sound. I know that the Thoroughfare from Cedar straits to Watts island have been greatly widened since my recollec-

tion. I was generally acquainted with the old people who lived in this neighborhood, and have died since my memory. I knew King Nelson, and he resided not more than a quarter of a mile from where I now live, on the North side of Back or Jenkins creek. I think his reported age when he died was from 90 to 100 years; but he did not know his own age, but he was a very old man. I think he died 15 or 20 years ago, and he was son of Zachariah or Sacker Nelson. He was always esteemed highly as a sober, truthful and correct man. I heard him say that his father was on Fox island during the revolutionary war. His father lived there, so he said; he told me that he lived on Fox island during the war. I never heard of his being a revolutionary soldier; I never heard from him or any one else that he was or was not a revolutionary soldier. I know James T. Evans, an old man who on Smiths island; I think he once lived on old Jones island, some 12 or 15 years ago. I know his general reputation on Smiths island and elsewhere, and in this neighborhood, for truth and veracity, and I don't think it is more than No. 1; and I don't think he stands very high for truth and veracity—he don't at all events with me, and not generally for truth and veracity; it is bad on Smiths island, where he lives. Never heard of any line being run by any surveyor across the lower part of Summerset county between Tangier sound and the right bank of the Pocomoke before that of Lieutenant Michler, a few years ago.

Examined by Mr. Wise.

I never heard of the character of James T. Evans being impeached in any court of justice. I never knew any one but myself to impeach his character for truth and veracity on oath, and I did not know that I would be asked the question under oath. I have heard a great many, not under oath, say that he would tell untruths. I have heard David Tyler, on Smiths island, say so. I have heard Hiram Bradshaw say so. I do'nt remember the names of any other persons I have heard say so, but have heard it generally reported by a great many. I mean by great many, several persons. I don't know how many. I don't know that I can name any others besides David Tyler and Hiram Bradshaw. I have never known him to be a witness in court. In a case where he is not swayed by interest, I would believe him under oath. I don't know that the man would swear to a lie anyhow, interested or not interested, but I have heard a number say that he

would tell yarns. I don't know that I ever heard any body say that he ever told a malicious or mischevious lie; but by yarns, I mean that I have heard he would tell untruths. I have never heard the tradition of the line run by Philip Calvert, of Maryland, and Edmund Scarbrough, surveyor-general of Virginia, across the land from Watkins, or any other point on Jones' island a straight and East line across Pocomoke river. I never heard that they had run any line on the Eastern shore between Maryland and Virginia. I have heard only of the Michler line. I have no knowledge or information of any marks of boundary line between the two States from Tangier sound across Pocomoke river. I have heard rumors of marks of a line on Smiths island; have heard more about it since this thing came up than ever before. I have paid no attention to a boundary line to search for one; for I believed there had been no line established between the two States; I never of any marks of a line from the old people on Smiths island. I have heard that John Marshall, who lives on Shanks island, was in Virginia, and paid his taxes in Virginia. I never searched for any marks of State boundary anywhere.

(Signed,) HANCE LAWSON.

Deposition of William Nelson.

Mr. William Nelson was next called, sworn and examined:

I was 64 years the 23d day of last February. I was born just below here on Jenkins' creek. I am the son of Thomas Nelson, usually called King Tommy Nelson. He died about 16 years ago. I don't know his age, he did not know it, but said he was from 90 to 100 years of age. Heard him say that he was born on Fox's island. His father's name was Sacker Nelson. My father said he lived with his father, Sacker, on Fox's island. I don't know what time. In the revolutionary war they remained there until they got their house burned by the British. He said that he and his father had to escape from the British by running into the bushes or rushes. After that they moved to the main, North of Cedar straits. He first moved to a place called Matthews creek, and afterward he moved to the Hammock down here, where Billy Lawson, on Jenkins creek, . He remained there until he bought a little lot up higher on Jenkins' creek. My father said that he was a stout boy, and nearly fit to go into the

army, and therefore had to skulk about to keep from being impressed by the British. I never heard him say that he ever was a soldier on either side of the revolutionary war, but on the contrary said he was not in the army. I heard my father say that he had heard his father, Sacker Nelson, say that he had seen the time when he could take a twelve foot fence rail and walk all the way from the main land across Cedar straits to Watts island. I never heard my father say anything about being on a survey of any line on Smiths island. Never heard my father say anything about a State line on Smiths island. Have never heard any tradition from any body of any line having been run by any surveyor across the lower part of Summerset county, between Tangier sound and the right bank of the Pocomoke river, before Michler's survey. I am not much acquainted with James T. Evans, on Smiths island; knew him when he lived on Jones' island, but saw him very seldom, and heard nothing of his general character.

Examined by Mr. Wise.

I never heard of any line being run from Tangier sound across Summerset county and Pocomoke river by any one, surveyor or not, until Michler's survey. I was with him two days, from here to Jones island, to Berry Thomas' house, right back of it, say 100 yards, where the post put up by the coast survey was. I started with him, Michler, to go over to Smiths island, but a storm prevented, and he did his work on Jones island. I am told the line came out here at James Tawes' house, a little North of it. That line was run before the Crisfield or E. Shore R. R. was constructed. I don't know whether that line touches the end of the R. R. wharf or not, as I never sighted it. I never heard my father say anything about a state line on Big Fox island running near a tree on that island. My father never showed to me any tree, a gum or other tree, on Smiths island as a boundary line tree between Virginia and Maryland, and I never heard him speak of such a tree; have never heard of any such boundary mark on Smiths island. I was not mistaken in hearing my father speak of Watts island for Fox island when he said that his father told him he had seen the time when, with a 12 foot fence log, he could walk all the way from the main, at Cedar straits, to Watts island. I suppose it is now 5 or 6 miles from Foxs island to Watts island. I suppose it has been that distance ever since I could remember, only accepting the washing away about 200 yards at the South end of Fox island. I don't

know how much it has washed away on the North end of Watts island. I was never there but twice in my life, and know nothing about it; have heard my father say that the washing away on the West side of Fox island was very considerable. In going with him in a canoe opposite to where the house was, he showed me the place in the water where his well and others' had been; and then it was 150 yards or more from the shore. My father had no education, and I have a little. John Nelson was the son of King Nelson, and about 77 years of age when he died—about 5 years ago.

(Signed) WILLIAM NELSON.

Deposition of Thomas W Dougherty.

Thomas W. Dougherty was next called, sworn and examined :

I was 54 years of age the 22d day of last December; I was born about 2½ miles from this place; and resided in this neighborhood ever since I was born. I think Jones and Cedar islands, South of Jones, which two islands form the mouth of Little Annamessex, have washed way all along the sound shore, 200 yards, in my remembrance; have heard of no line run by anybody across the lower part of Summerset county, between Tangier sound and Pocomoke, except the line run by Michler. I have known James T. Evans, on Smiths island; he is a cousin of mine.

Examined by Mr. Wise.

The Southwest point of Jones island is the North point of the mouth of Little Annamessex river. That point has washed away a good deal. I have heard Nathaniel D. Dougherty say that there was a peach orchard on the old Jones island, and as good a well of water as was in —— Annamessex. This whole neck of land, consisting of several parts, including Jones island, was called Annamessex—say from Kingston down to Cedar straits or Pocomoke sound. The channel of Little Annamessex has not changed in my remembrance. I followed the water for 30 years up to the last three years.

(Signed) THOS. W. DOUGHERTY.

HORSE HAMMOCK, SMITHS ISLAND,
May 31st, A. D. 1872.

The commission met at this place pursuant to adjournment on yesterday at Crisfield. Present—Thos. K. Whalton, J. P. for the state of Maryland, and Hon. Isaac D. Jones and W. H. Aydelotte, commissioners on the part of Md., and Hon. D. C. DeJarnette, Col. Wm. Watts, and Gen'l Henry A. Wise, commissioners on the part of Virginia, and proceeded to take further testimony.

Deposition of Francis Evans.

Francis Evans was first called, sworn, and examined.

Examined by Mr. Wise.

I am 64, in my 65 year of age; I was born on Smiths island, on Rogues point, which lies about half a mile below or South of the thoroughfare towards the N. end of the island; my father was John and my g. father Francis Evans; they both lived at the same place; I have heard some say the line between Maryland and Virginia was on the North part above Horse hammock, the great island about a mile from this house, and others said it was below Horse hammock; I have been shown a big stone last winter by Jas. T. Eavans, at Beaver hammock; I was shown a gum tree by Severn Bradshaw, when we were boys, at Cow hammock, which he said he was told was a line tree between the two states; the tree stood some time after that; I don't know how long, but I think I could go very near where it stood, as I had seen it often; I never examined it particularly for any marks; I can't say how old I was when I first saw it, but I can state how Severn Bradshaw came to show it to me: We were about the same year's children, or the same age, and we were on what is called Cow hammock, or Cow ridge, or Orchard ridge—it was called by all three names; the gum was on Cow ridge, now owned by Severn Bradshaw; the reason we were there together was that we were fond of bird egging, and were at the trees—there were a good many trees on it then, and there are some around the hammock now; it is cultivated now by Severn Bradshaw; I can't say how long the tree has been down; it was located rather at the lower end, but pretty much in the middle of the hammock; Severn Bradshaw did not tell me how he knew it; I have heard

other people talk of it as the line; I have also heard of and seen a slab-like stone in the water about 15 or 20 yards or more from the edge of the marsh on Beaver hammock in Misters thoroughfare, Easterly from Troy island, which is the one shown me by Jas. T. Evans; I never was shown or heard of any tree, or stump, or stone, or other mark of a state boundary line on the lower end of Smith's island South of Horse hammock, but I have seen Gum island, where it was said The Gum, whether a tree or island was the name I don't know; it was the place of John Parks' residence; I never saw any mark there; it is the place where John Tyler now lives; I don't know whether that place lies North or South of this place; I have heard there is a stone on Barn point from those who live there; this I heard for the first time last winter.

Examined by Mr. Jones.

Severn Bradshaw told me that the gum on Bow island was a mark of the line between Maryland and Virginia, not that it was a line between man and man. Severn Bradshaw is here present, and says he don't dout my statements, but don't recollect the time, nor do I, but it was more than 40 years ago.

his
(Signed) FRANCIS ⋈ EVANS.
mark.

Deposition of Severn Bradshaw.

Mr. Severn Bradshaw desired to be re-examined, in order to state matters which he forgot and omited to state when first examined. He said:

There were two large gum trees, and the only two large gum trees on the island at the time; the one stood on the Orchard hammock where I live, as described by me the other day; the other on Sassafras hammock, where Tubman Evans lives; I recollect both trees well. The tree where I live showed more visibly on the Chesapeake bay side, and the other on Sassafras ridge showed more visibly on the Tangier sound; we on the upper part of Smiths island thought the tree where I live was the state bonndary line mark, and the people on Little Annamessex thought that the tree on Sassafras hammock was the mark of the state boundary line. The one at my house was marked with several

notches on south side of this I am positive; whether the one on Sassafras was marked or not I do not know; I don't recollect whether there were any notches on the north side of the tree at my house. Sassafras is Northwest of Horse hammock a considerable distance, and I can show it to you, it went by the name of Tyler's gum; both trees are now gone. I omitted to state fully, being hurried, all that I now recollect about what Tommy Tyler said in the trials of the vessels Amelia, and Ann, and Edenton. In addition to what I have already said, he stated that the line between the states of Maryland and Virginia, his uncle, Butler Tyler told him was run twice in his recollection; that he was said to be 100 years old when he died, and he has been dead at least 45 years. I have seen him, was nearly grown when he died, and was at his funeral. Tommy Tyler said that Butler Tyler had told him that at one time the line ran through his yard, at Black Walnut point, and at another time it ran a little below Drum point, on Tyler's creek, making a difference between the two lines of about 300 yards. This is all I have to add. I do believe that one or the other of these two trees has been recognized by the people on this island for more than a century back.

Examined by Mr. Jones.

My father owned where I live, at Orchard ridge. He made a will and devised it to me, and I was the first who built a house on it; my father's name was Jacob Bradshaw. The gum tree stood south of my house about 125 yards. My father's will is recorded in Princess Ann, the county seat of Summerset county, Maryland, and he lived on another part of the same land south of my house and the gum at a place called the "Forked Oak," and I know where it was said to have stood; it is about 4½ miles Northwest of this place; that place is open to the bay and is not washed away badly; the orchard and cow ridges were once the same thing, and are now separated by a small drain. The Orchard Ridge is on the East side and the cow ridge is on the West; they lie nearly together, N. and S. at the Western mouth of the Mister's thoroughfare which mouths into the bay; the forked oak was on Cow ridge, and a round cedar post marked with 4 notches on each side, was placed where the oak was said to have stood, to mark a private boundary. About 3 or 4 years ago the cattle broke the post off, by rubbing against it; my father always paid taxes in Summerset county, Maryland, and so have I; that is North of where Butler Ty-

ler used to live all of two miles; thirty or forty years ago, there was scarcely any talk about the line of the two states on this island. The taxes were small, and the oysters in the bay were not counted of great value, and we oystered in the creeks; but since dredging commenced about 20 or 25 years ago, oysters have become valuable, and people began to look more closely after the line of the two states. I, among others, have looked more closely to where the line is; I used to think but very little about the lines of the states; my business was to get oysters where I could, in Virginia or Maryland, and I was not intimidated; since that time I cannot do so; a man can't tell, now-a-days, on this island, whether he is in one state or the other. My father and I and the people up there voted and acted as if in Maryland. The first election district on this island was laid off and called No. 14, about 40 years ago, before I was a voter, as I think. Then it was held at the old church where I live, by Solomon Evans and John Tyler, who lived at this place, and old Capt. Jno. M. White. After a few years the district was abolished, and the voters had to go to Brinkley's, on Annamessex. The election district on this island was re-established in 1853, and is now district No. 7. The first and present districts are of the same bounds, both including Horse hammock and the proprietors and residents of Horse hammock have been from first to last judges of election. I, myself, have been judge of election and clerk of elections, and for 4 or 5 years past have been a register of votes, and I have been a justice of the peace for Maryland for 2 years. The first registers of votes for this island for Maryland, were David Tyler, Hainey Bradshaw and William Evans, of John. Then John Evans, son of Johnson lived here at Horse hammock; I think he was registered as a voter; I was register of voters last fall, and think John Evans, residing here, was registered and voted. There have been four public school places of Maryland on the island. The first was North of the thoroughfare; one at Rogues point, West, N. W. from here; and one on Oak hammock, near Alick Tyler's store, Northwest of this place, and there was another on North end, north of this place. There was no school at Horse hammock or South of it. Generally the children at Horse hammock have attended the public schools of Maryland. There have never been any voters registered in Maryland South of Horse hammock, and none due West of it; some at Drum point, and some at Hogs neck, have been registered in Maryland; none South of Horse hammock, and none as far South as Horse hammock,

except those at Horse hammock. I have considered the voters on the upper end of Hogs neck, as far South as John Tyler's residence to be in Maryland.

Re-examined by Mr. Wise.

I do not know whether the proprietors of Horse hammock voted in 1833, in 1835, in 1837, 1839, 1841, 1843, in Virginia, for a member of congress or not. I believe that all the old residents on this island used to think that Horse hammock at this house we are now in was in Virginia. I know that some have said that Horse hammock was in one state and some in the other, but I have heard the old people say generally that it was in Virginia; I have heard that old Uncle Solomon Evans had John Tyler, then living here, made a magistrate, about 1835. I have no knowledge of Horse hammock ever being claimed for Maryland before that time. I am a member of the Methodist Episcopal church, and sometimes conduct the services at our church as an exhorter.

(Signed) SEVERN BRADSHAW.

Deposition of Benjamin Bradshaw.

Benjamin Bradshaw was next called, sworn and examined :

Examined by Mr. Wise.

I am about 48 years of age. I was born just above where Alick Tyler's store is. I now live on Drum point, on Tyler's creek. I have found a stone at the mouth of a little creek, near "The Barn," a point so called, as I am told. The stone is in the water, about knee deep, about 40 odd feet, as measured by my canoe, from the shore. It appears to be in three pieces, it is jammed all together, and is so in the mud that I cannot say whether it is one stone or not ; the whole, as it appears, seems to be as big as this table ; say about three feet square—not exactly square, but rather diamond shaped. Its color is light, but it is covered with mud, and I cannot say positively what its color is; the bottom is a sticky clay. There are stumps around it—some right big ones, and some small ones. I can't say of what wood. When the commissioners were here last fall we were talking about the stones at the church, and it was thought best to

stake them off when found. Albert Evans told me then where to look for it at "The Barn," but I did not search for it then. Day before yesterday Mr. John Tyler told me that you, Mr. Wise, desired to find it, and I searched for it yesterday, and found it as I have described. I can't say how far it is down in the mud—it was knee deep from the top of the stone—but at low water to-day will be nearly bare. The stone in Misters thoroughfare, South of Frog island, at Beaver hammock, I saw myself 25 years ago. I never was told, or enquired, whether it was a boundary mark or not. I know nothing about the line of the States. Have seen the Beaver hammock stone often since I first saw it.

(Signed) his BENJAMIN ⋈ BRADSHAW. mark.

Deposition of Stephen T. Dies.

Stephen T. Dies was next called, sworn and examined:

I am 29 years of age. Born on Smiths island, at a place called North End, where Laban Evans now lives—north of this place about three miles. Caleb Evans, Capt. John Evans and myself, were catching terrapins the other day, and we came across a large stone in the water near Cow hammock—some call it Cow ridge. I first saw it, and we went back to it, and looked at it, in about two feet water, the tide up. I think it is from 6 to 8 feet long, and about 4 to 5 feet across it; it was full of oysters and moss, and we could not tell what sort of a looking stone it was—it was surely stone of some kind. It is about a N. West course from here, and a West course from the stone at Beaver hammock. It is just off Cow Ridge, on the Southern side of Misters thoroughfare, on a hammock just North of Hog Neck, and separated from what is now called Hog Neck, where Capt. John Tyler lives, by a small thoroughfare, about a mile above where Capt. John Tyler lives. I have got marks for it, and can go to it at any time; did'nt see any stumps exactly around it, but some outside of it, I guess in 15 or 20 yards of it, in the water. The stumps were about a medium size. We were about the stone and stumps about a quarter of an hour. I know nothing of the State line—have heard some talk about it. All of our people, the oldest, said it was somewhere about the Mister's thoroughfare. I can't say how deep that stone was sunk in the Thoroughfare. This stone is about due west from the stone at Beaver hammock.

Examined by Mr. Aydelotte.

I have no instrument by which to judge of the course; but I am a sea-faring man, and have always been following the water, and can use the compass as well as any man, and can judge of course. I judge by the mouth of the Potomac and an East and West line cuts the mouth of that river and Misters thoroughfare. That thoroughfare is opposite, on an East course, to the mouth of the Potomac. The stone at Beaver hammock is near the South side of Misters thoroughfare, and on the North side of Big Thoroughfare, at a place called the Bottom. I have heard of a stone at "The Barn" point many years ago, ever since I was a boy, but have never seen it. "The Barn" from the stone I have found in Misters thoroughfare is about East, though I have never cited the course by the compass. I can see the mouth of the Potomac from the mouth of the thoroughfare, both points of the river, and I have cited it before with the compass. I can write but little, and prefer my name be written.

(Signed) STEPHEN T. his ⋈ mark. DIES.

Deposition of Johnson Evans.

Mr. Johnson Evans was next called, sworn, and examined:

I am 58 years of age. I have been off and on living at Horse hammock about 6 years. I was born on Smiths island, and have been living there ever since. I bought this place called Horse hammock from John Marsh; he bought it from his father-in-law, Peter Evans; Peter Evans bought it at auction at a sale under a mortgage from John Tyler to Peter Evans, about 27 years ago. Since I bought it I have paid taxes in Maryland, and my son John, who was joint owner with me of the place, paid his taxes in Virginia. I have heard that about 45 years ago taxes were paid in Virginia. I have heard that John Tyler, when he owned it, paid in Virginia; but for the sake of being a magistrate in Maryland, he paid his tax in that state. Peter Evans, I am told, paid his tax in both states. Peter Evans now lives at Chesconessex creek, in Accomack county, Virginia. I have heard that Horse hammock was always considered in Virginia until John, called Jacky Tyler, was appointed a justice of the peace in Maryland.

I have heard for many years of a stone on the East side of Smiths island, about three-quarters of a mile or a mile North of this house at Horse hammock, at which children John L. Tyler, William Tyler, and Thomas Tyler had been taken when young and one or more of them whipped, and one or more of them ducked, to make them remember it as a boundary stone; a boundary of what I don't know; whether of two states or two owners of land I don't know. I can tell of stone in the Mister's thoroughfare. Capt. Browne, of the Tredagar tug, sent me a paper with a drawing of the two stones on it—of the one taken up by you commissioners the other day, and of the thoroughfare stone, and I was looking at the papers when Captain Henry Dies came up, and I inquired of him whether he knew of any such stone. He replied that he did; and the following Monday morning he and Albert Evans and I went to the stone in the thoroughfare, and he said, when he first saw it, it was not broken; he went to it directly. When I saw it that day it was broken into two pieces, about 18 feet apart. I think it was broken by the ice, but don't know. Last fall, in October, I went with Mr. Wise, Mr. Aydelotte, Captain Brown, Captain Drummond and others, to the stone a mile or so above Horse hammock, and showed it to them, and they sighted it by a compass. The same day we went to near the stone in the Thoroughfare, but the water being thick we could not find it then; but it was found last week in two pieces, as I have described. The other stone at Cedar hammock was taken up last week and examined and replaced in the spot where it was taken from. That was the same stone at the same place three years ago.

Examined by Mr. Aydelotte.

I have no knowledge of what the true boundary of Virginia and Maryland is on Smiths island. I have doubts that the stone removed the other day is the boundary stone between the two states, and don't believe it is now. I have — my grandfather Parks say that at one time the state line ran between his house and kitchen apart, at the place where John Tyler now lives in Hog neck, and that place is in a line with the stone which was removed the other day. But I was told afterwards that Tommy, called King Nelson, was on the island at the church at one time, and told the people then there that the state line ran through the Mister's thoroughfare. I supposed that the stone and John Tyler's house would show the line between the two states;

but my belief now is that the stone in the thoroughfare marks the line between the two states, because it is the big stone, and King Nelson stated that the line ran through the thoroughfare.

Examined by Mr. Jones.

The stone we removed is the beginning bounder of the land sold by Marsh to me, as stated in the deed, and also in the deed from John W. Evans to me. I sent both the deeds to Princess —, in Maryland, to be recorded, because I did not want to pay taxes on the land in both states, and I saw no prospect when the line between the states would be run.

(Signed) JOHNSON his ⋈ mark. EVANS.

Deposition of John Tyler.

Mr. John Tyler was called, sworn and examined :

I am 43 years of age; I live in Hog neck, at the place where old Mr. John Parks lived, which is North of a West line from this place. I have always thought since I have lived there that I lived in Virginia; I pay taxes in both, because I am called upon to pay taxes in both, because the line, as I have always heard, runs through my yard; I have heard that from my earliest childhood. I have heard that it was the place where, in old times, runaway marriages were celebrated—the ones from Maryland were married in the kitchen, which was in Virginia, it is down now, and the ones from Virginia were married in the great house, that being in Maryland. None have been celebrated there in my day. Joshua Thomas usually married them; I know but little about the line; I have voted here on this island for candidates for office in Maryland; I went to the polls and voted for Mr. Commissioner Waters for clerk of the court of Summerset county, Maryland, and my name is on the register's list, but I never applied to be registered, and I have voted at Tangier island and at Onancock, in Virginia; in 1855 I voted for Mr. Flournoy against Mr. Commissioner Wise, of Virginia, for the office of governor of Virginia; I was a Know-nothing then; I now take out my oyster licence in Va.; I saw the stone above Barn point about 15 years

ago; I never heard of the stone at Beaver hammock until within the last few years.

(Signed) JNO. TYLER.

CRISFIELD, E. S. MD.,
MONDAY, June 3d, 1872.

The commissioners met at this place this day in pursuance of the adjournment on Friday last. Present—Thos. K. Whalton, justice of the peace for Summerset county, Maryland, and the Hon. Isaac Jones and Levin L. Waters, Esq., commissioners on the part of Maryland, and Col. William Watts and Henry A. Wise, commissioners on the part of Virginia. Absent—Mr. DeJarnette of Virginia, and Mr. Aydelotte of Maryland.

They proceeded to take the following depositions—to-wit :

Deposition of Henry Dies.

Mr. Henry Dies, of Crisfield, was first called, sworn, and examined by Mr. Wise :

I am between 57 and 58 years of age; was born on Tangier island; in 1835 I moved to Smith's island, and lived there until February last except 3 years. The name of my father was Daniel Dies; he died about 17 years ago, aged about 70 years; my mother's maiden name was Esther Parks, a daughter of Joby Parks, who was my grandfather; he lived on Tangier island. I moved to this place on Smith's island, called N. end, S. E. from the church, close upon the thoroughfare. I knew old Mr. John Parks, a brother of Joby Parks, my grandfather, he was my great uncle; Mr. John Parks lived on a place called Hog neck, on Smiths island. I have heard in times past from the old people on Smith's island that when the people on that island desired to be married from the state of Maryland that the Rev. Joshua Thomas, who was in those days a Methodist local preacher on that island, would meet them at that place and marry the couples of Maryland in the dwelling-house of my uncle John Parks, and when any couples from Virginia desired to be married he would meet them at the same place and marry them in the kitchen, that being then con-

sidered in Virginia; I do not mean the runaway couples, but those who were regularly married according to the laws of their respective states. I don't recollect of ever hearing of any gum or other tree at that place marked or recognized as a state line; the house and the kitchen were from 20 to 30 feet apart, more or less. Joshua Thomas was the standing, well-known clergyman, who performed the rites of marriage ceremony on that island; I have heard of his biography, published in Philadelphia and written by Rev. Adam Wallace; I have handled the book. About from 1835 to 1840 I was gunning in Mistars thoroughfare, and run my skiff upon the top of a pretty large stone near the edge of Beaver Hammock marsh; I think when I first saw it it was not further from the edge of the marsh than 15 or 20 feet; I saw it several times afterwards, but never noticed it again particularly until, I think, year before last; when I first saw it it was in the water, and I saw but one piece, and when I saw it in the year before last it was in two pieces; the pieces were, I think, from 10 to 15 feet apart; it may have been that when I was first there that there were two pieces then, but I saw but one then, and two afterwards, as I have said; the last time I saw them they seemed to have been broken the one from the other, for they looked to be of the same quality of stone; I never saw the one or two at low tide when bare. Mr. Johnson Evans, of Horse hammock, year before last brought to me a paper which had a written description and drawing in pencil of the shapes of these two stones, and he inquired of me whether I knew where to find two such stones. I showed him where they were, and found both, but that was the first time when I knew there were two at that place; they are about South by East from Tray island about half of a mile. The only other stone besides these two was, that I knew of, is that lying from a half to ¾ of a mile North of Horse hammock house at Cedar hammock. I first knew of that last-mentioned stone in 1840, I think. There was an old man named John L. Tyler; he said he was called on a line there, whether between the states or between private individuals who claimed the land I don't know, but he said he was a small boy, and he was too small to whip, and he was ducked; he was thrown into the creek, and thought they were going to drown him to make him remember the boundary; he was then about 40 or 50 years of age when I heard him say this, and has been dead all of 15 or 20 years; he was the father of Alick Tyler, and lived at Oak hammock, where Alexander Tyler now lives; it is near Black Walnut point, to the North of it, just by a windmill. Drum point and Black Walnut

point are pretty much all one; there is another Drum point on the N. E. end of Smith's island; the East and West line which ran between John Park's house and kitchen would pass in say 100 yards of Park's ditch, which is S. of Tylers ditch, and it passes in say ¼ of a mile from Walnut and Drum point, in ¼ of a mile South of them.

Examined by Mr. Jones.

The place called Pittscraft my old uncle Laban Evans told me laid South of Misters thoroughfare down to the Md. and Virginia line. Cow ridge, I think, as it was then called, laid East of Levins creek, which emptied into the thoroughfare to get into the bay, and its mouth is about a mile from the bay. The Cow ridge lies between Levins creek and the thoroughfare, to the Eastward of Levins creek and South of the thoroughfare; it is a long ridge.

(Signed) his HENRY ⋈ DIES. mark.

Crisfield, E. S. Md.,
June 4th, 1872.

The joint commission met this day, at this place, pursuant to adjournment yesterday :

Present—Hon. I. D. Jones, Wm. J. Aydelotte, Col. Wm. Watts and Henry A. Wise, Esq'r, and proceeded to take the following depositions :

Deposition of Edward Taws.

Edward Taws, being first affirmed, was first examined.

Examined by Mr. Jones.

I am near 51 years of age; I was born in the lower end of Little Annamessex, from Jones' creek down towards Cedar straits, and South of Little Annamessex river, is called Little Annamessex, to distinguish it from North between Big and Little Annamessex called Big Annamessex. I have lived in Little Annamessex neck ever since I

was born; my first occupations were those of mariner, and catching, and buying, and selling oysters; I ran oysters first from York river and Cherrystone, and afterwards from Ape's Hole creek, and Little Annamessex river. From my earliest recollection to about six years ago, the people North of Pocomoke, at Ape's hole, have always oystered North of the channel of the Pocomoke sound, without being apprehended. There never was any strict attention paid to where oysters might be caught, on either side of the line between the two states, and no one catching oysters was apprehended or disturbed until the dredging laws of the two states began to be enforced. Tommy or King Nelson I have heard say that his father, Sacker Nelson, owned Fox island. He said his father told him the islands of Fox island group were once nearly all joined together down to the Southernmost point of those islands, now called South end; he said he told him he thought he could have taken a fence log and walked from Cedar straits to South end, so-called. He also said that his father stated there was in his day a marsh island between the South end of Fox island, and the North end of Watts island. He said it was washed away; have fished around Fox island a good deal in the season of fishing; on the Tangier sound side they have washed away a good deal, all the islands wash most on the Western sides; I lived near King Nelson all my days, and in about 150 yards of him during his latter days I have heard him say about the time the dredges were first taken in Pocomoke sound, say about from 20 to 25 or 26 years ago, that the — between Maryland and Virginia, ran right across Fox island, close by where old Johnny Mason's house stood, the father of Middleton Mason, who moved to Onancock, in Virginia. He told me the well his father used water out of, off his residence on Fox island, was then at the time of his statement about 150 yards on the west side in the water. I have never heard of any tradition of a line run from Tangier sound, North of Cedar straits, to the West bank of Pocomoke river, nor have I heard of any marks of any such line across the Little Annamessex neck. I have heard only of the line named to me by King Nelson across Fox island.

Examined by Mr. Wise.

Tommy or King Nelson told me he lived on Big Fox island; it was on the West side of that island where the well was spoken of as in the water; and Johnny Mason, the father of Middleton Mason lived,

I think, about the same place on Big Fox island. There is an island North of Cedar straits, and north of Big Fox island, called Cedar island marsh. The ledges and muddy marsh are to the East of Big Fox island. The Southern island of Fox is called Little Fox island. Both, Big and Little Fox islands, are now cut through by the waters making as many as four islands where were but two. The Big thoroughfare when I remember first, ran as it does now, between Little and Big Fox island. I didn't catch oysters but bought them in Cherrystone and York rivers. I never heard King Nelson say that with a fence log he could have walked from Fox island to Watts island, or say that his father said so. Have never heard of a line run over 200 years ago across the Pocomoke from Tangier sound to the ocean, by Scarbrough and Calvert. I have heard of a line between Virginia and Maryland on the Eastern shore, but not across Little Annamessex neck. I have gone up the Pocomoke river, not very often though; I was never shown where the line crossed the Pocomoke. I know where Pitts wharf is on the Pocomoke. Sykes island is nearly, as I see from the coast survey chart, now shown me by Mr. Wise, is due East from Cedar straits, and the North part of Sykes island is North of Cedar straits. Pitts wharf is higher up, so-called Pocomoke river, than Sykes island, and I don't know whether that wharf is north of Cedar straits or not; I don't know where the Virginia and Maryland line borders on the Pocomoke river, but I have heard that the line is somewhere near where the widow of John N. Dennis, dec'd, lives. I never heard of the Virginia and Maryland line crossing the Pocomoke river, but I have never heard of a line between Virginia and Maryland which touched the Pocomoke river.

Re-examined by Mr. Jones.

I have heard of Rock Hole creek which lies on the North side of Little Annamessex, and of Sand creek which lies on the Southside thereof between it and Cedar straits.

(See patent to James Gray in 1701.)

I know nothing of Persimmon hammock. I was never shown any State line marks on Fox's islands.

(Signed) EDMUND TAWES.

Deposition of Clement R. Sterling.

Clement R. Sterling was next called, sworn and examined.

Examined by Mr. Jones.

I am either 64 or 65—born 1807, 1st June—I think 65. Born down the lower end of Little Annamessex, and always lived in that neck. I know nothing of the Virginia and Maryland line myself, and only what I have heard folks say. I always heard that the line run from Horse hammock East to Watkins point, across to Ham town, or Chincoteague, or somewhere there, according to what the old people said. Michler was at my house 7 days—I went with him to Ape's Hole when he run the line. Old man King Nelson I never heard say any thing about the line; but have heard him talk about Fox islands, and how far he could go with a fence log. I have heard him say that he could come all the way from Watts island to Annamessex with a fence log, and jump across it. I heard him say there was a peach orchard on Jones' island, at the North point of Little Annamessex, as far out as the bar, somewhere near where the lighthouse now stands. I can recollect back about 50 years, and that point has washed away half a mile in that time. I never heard of any line being run except by Michler, and he began at the sea side and came this way. I was with him at Somer's Cove and Ape's Hole landings.

Examined by Mr. Wise.

I was with him at Somer's Cove while he was boarding at my house, and the line came out at James Taw's house, at the head of Somers Cove, North of the dwelling, less than 50 yards North, down to the landing.

(Signed) CLEMENT R. STERLING.

Note by Governor Wise, following deposition of Clement R. Stirling.

I am informed by Mr. Aydelotte that a patent ought to be found from Virginia for part of "*Troy Point,*" owned by John Mason, the extreme Northeast main land of Accomack, a large body near to Sandy

Hill, part in Accomack county, Virginia, and part in Worcester county, Maryland, all now occupied by Judge John R. Franklin, who now pays taxes in both Maryland and Virginia.

Deposition of John Spence.

John Spence was next called, sworn and examined :

Examined by Mr. Wise.

As far as I know and am informed I am in my 77th year of age; I will be 77 on the 25th day of December next. My age is not recorded. I was born in Hog Neck, on Smiths island. I was born in a house owned by my uncle, John Parks, and on the land where he resided, and he lived where John Tyler now lives. Hog Neck ran up North to a creek called the Head of the creek, which used to be my boat harbor in the time of the British war. Hog Neck laid North and West of South Point. It laid North and South, lengthwise the island, on the Chesapeake bay. Tylers creek is called by that name up to Sheep hammock, and thence it lies North up to Tyler's ditch. Park's ditch lies to the Westward of Tyler's creek. David Tyler and Butler Tyler were the original owners of all the land of Oak hammock and Horse hammock, clean down to Drum point, when Aleck Tyler and John Wesley Marshall, Thomas Bradshaw, Stuart Evans, and one of Walter Marsh's sons, and Ben. Bradshaw, and Tubman Evans, who lives close to the Gum, now live. From John Parks' house to Drum point was near East by North, from a half to three-quarters of a mile, as near as I can guess. John Parks was my mother's own brother, and my mother and father lived on his land, to the Westward of his house, on the Chesapeake bay shore. When I was quite a boy a dispute arose about where the line of Virginia and Maryland ran. They said that the law of Virginia forbid Marylanders from skiffing and gunning in Virginia, and several old people were called together to say where the line was. Richard Evans, who lived at Kedges straits, and who was called King Richard because he was best off I suppose, John Parks, an old man, Jacob Bradshaw, who was quite a young man then, met at old uncle John Parks, where young John Tyler now lives, and uncle John Parks said that the State line ran between his dwelling-house and his kitchen. I was then, I think, but am not positive, about 18 or 19 years of age. I followed

the water and loved gunning, and had a skiff, and the noise scared the geese and other wild fowl of a night. My uncle got mad about my skiff, and Jacob Bradshaw had a fowling point called Goose harbor, and uncle King Richard had a fowling point called Fogg's point, where the lighthouse now stands, and that called them to meet about my skiffing. There was some contention about the skiffing, and they came down on uncle John Parks', on whose land I lived, about my skiffing, and they all agreed that was the line. Neither one said that that line between the house and kitchen was not the line. I stopped skiffing, and that line was always respected by me and regarded by me as the State line. I don't recollect of hearing about any marriages at the place; but the dwelling house was in Maryland, and the kitchen in Virginia, and that line was always upheld by us on the island as the line between the two states. I know where Cow ridge used to be; I always called it battle ridge. Old uncle Solomon Evans always owned it; it lies to the North and Eastward side of the Little Thoroughfare, next to the Barn cove and Whits cove; Terrapin sands is still above to the Northward of that. The reason they gave it the name of Battle ridge was, that some of the boys went down to dig a cow-hole, and they got to disputing and fighting, as I am told. There was no stone or tree or other mark on the line said to be at uncle John Parks' house. I never heard of any mark of a state line except a gum tree where Tubman Evans now lives, and a stone at the mouth of the Little Thoroughfare at the end of Otter island. Otter island is, say 100 strides from the main marsh of Whites cove, and Barn cove is about, say half a mile off on the Sound side. I have seen the stone; it was not free stone, and was not flint stone, I think, but was like any other stone washed deep in the ground; I mean to say that it looked as if buried deep in the ground and by washing had got rusty and mossy; but was like a ridged coffin, and looked to be a pretty large stone; the old people always told me that it was a state line stone. Horse hammock, where the house stands, was always in Virginia as long as I remember. I left Smiths island 27 years ago the 14th day of last November past; I lived North of John Parks' dwelling-house, and always paid taxes in Maryland. I don't remember that John Parks ever paid taxes; he could go from one house to the other, so they told me. South point and Sheep hammock, up to Fishing creek, always paid taxes in Virginia. I can't say where the people who lived where Johnson Evans now lives on Horse hammock paid taxes; old man Jakey or John Tyler owned it until he run

through it. I have always heard of a stone about a mile or three-quarters of a mile North of Horse hammock, on the East side of Smiths island, the one I have described as Otter island, which was put there to mark the state line, as they told me. The old man Soloman Evans, who used to own the places I am telling you about, is dead. John Parks died before I removed from Smiths island to Sykes island, where I live now; I think he died about 31 or 32 years ago, to the best of my recollection. I think he told me a short time before he died that he was 82 or in his 83d year of age; he was a very old man. That is about all I know, and these things which I have told are very plain in my mind—as plain as my fingers. I have seen the gum tree at Tubman Evans'; I can't say how long it is since I saw it last, and can't say whether it was cut down or rotted down.

Examined by Mr. Jones.

Otter island is about half a mile or three-quarters of a mile North of Horse hammock. As far as I remember back, John Tyler lived at Horse hammock house; he lived there before Peter Evans during the war of 1812; I can't say how long he lived there; he was a justice of the peace once, and I think it likely he was, and I think he was while he lived there. No family then lived South of John Parks' house on Hog neck. There was Shank's, where John Marshall lives, Horse hammock, and one family on Fishing creek. Two families then lived at Shank's—Billy and Dicky Evans; the old man's son Dickey lived at Fishing creek; a Hoffman afterwards lived South of John Tyler. I havn't been there for some years; when I have gone there it has been at the upper end to church. There was first John Parks and all South of that; then where young Dickey Evans — at Fishing creek, Billy and Dickey Evans at Shank's, Jackey Tyler at Horse hammock; and these are all that I remember South of John Parks' house at that day. Shank's families were about two miles South of John Parks'. I did not know any ridge called Dogwood ridge, and never heard of Pitcraft. I knew Tommy Tyler, son of David, and the land he lived on was called Drum point, on Tylers creek. Where I lived on Smiths island, boating generally was our living—trading in oysters mostly.

Re-examined by Mr. Wise.

When I first began the boating business there was but very little trouble about the place where we oystered. We first bought oysters

at Nanticoke and ran them to Washington. The Yankees came in larger vessels and gave higher prices, and drove us out to the Western shore of Virginia. We bought and carried, but didn't catch oysters generally. Sykes island, as far as I can remember, has always been in Virginia; it lies about due East from Apes hole. Rich hammock is North of John Parks' house.

(Signed) JOHN his ⋈ mark SPENCE.

CRISFIELD, MARYLAND, June 5th, 1872.

The joint commissioners having adjourned on yesterday to meet to-day at Smiths island, to visit two stones—one at the mouth of a creek off "The Barn," and another on the West side of the island off the shore of the upper part of "Hog Neck"—but the wind being very high, and rendering the work impracticable on the island, they assembled to-day at this place—

Present—Hon. I. D. Jones, Wm. J. Aydelotte, Esq., Col. Wm. Watts, and Henry A. Wise, Esquire.

And they proceeded to read numerous patents of Virginia for land at and near divisional line as therein called for of which the following were read and noted, and they proceeded to take the depositions of the following witnesses:

Deposition of John W. Evans.

John W. Evans was first called, sworn and examined:

I am 34 years of age last April, 1872; born on Smith's island, where Benjamin Evans now lives; I was when a small boy shown a gum tree which stood on Old Orchard or Cow ridge, a little South of Misters thoroughfare, where Severn Bradshaw now lives; I have often swung in a swing on that tree when quite a small boy, and was always told when swinging one way that I was in Virginia, and when the other way I was in Maryland. The tree is now gone, but the stump

is there now, just the top of it above ground ; I searched for it last Saturday, found it, and have brought some of its pieces to this place; I am positive that is the stump of the gum tree which I swung on, and which I was told was the line tree between the states of Virginia and Maryland in my early boyhood. A stone was lately found as I am told by Stephen T. Dies, John A. Evans, and Caleb Evans, on the West side of the island, off the Orchard ridge near the N. end of Hog neck. I have not been at the stone, but it is now staked off in Chespeake bay, with a flag on the stake, which I could see from the gum stump I have described, and the flag on that stone as shown to me is about a West course from the stump, as near as I can judge without a compass. Another stone has been found, which I have seen, at the mouth of a little creek, through the marsh called Otter creek, I am told, South of "The Barn" point, on the East side of Smiths island; and the stone off Orchard ridge, and the gum stump, and the stone near Beaver hammock described by other witnesses as near Troy island bar, and the stone in the water off Otter creek at the Barn point, all, except the stump, being now staked off with flags, range nicely East and West, as near as I can judge without a compass. The stone off Orchard ridge, I am told, is a very large one, about 6 by 9 feet, and is the same sort of, I am told, as that near Beaver hammock. I paid taxes once in Maryland to Mr. Roach, the sheriff of Summerset county, when I lived at Horse Hammock house, and he paid them back to me. There was another John Evans, and he meant to collect from him. I paid taxes for my half of the Horse hammock in Virginia, and I now live North of Horse hammock on a part of Orchard ridge now called Rogues point, which I bought about two months ago of Henry Dies, and the deed will be recorded in Accomac county, Virginia. The Rogues point where I live, purchased from Henry Dies, has been always taxed in Maryland, though it is, I know, recorded in Virginia. The stakes and flags have been put at the stones within the present week, since these commissioners have been here. You can from one stone see two of the flags ; from either end of the line you can see the next flag, but not the third, but from the centre you can see the flag at either end and tell whether the three are in a straight line.

(Signed) JOHN W. EVANS.

Deposition of Charles W. Marsh.

Mr. Charles W. Marsh was next called, sworn and examined:

I was 33 years of age last November; I live on Rogues point, Smiths island. The first time I ever went to school, when about 9 or 10 years of age, I swung on the gum tree described by Mr. John W. Evans, and was told it was a line tree of the two states, Maryland and Virginia, and I can corroborate what has been already said by him (Mr Evans) both as to the tree and stones. I can add only that I believe the original Hog neck extended as high North as the stone found in the Chesapeake by Mr. Dies. The North end of Hog neck has washed at least 100 yards in my day, and is now cut through by two small creeks.

(Signed) CHAS. W. MARSH.

ANSWER OF LORD BALTIMORE

TO

QUESTIONS ABOUT MARYLAND.

No. 96—A.

Public Record Office—State Papers—Colonial—Maryland. Vol. 43, pp. 101–102. March 26th, 1678.

My Answer to the Enquiries sent unto me by order of the Lords of the Committee of Trade and Plantations:

To the 1, 2, 3. I answer that the said provynce was originally granted by his late maj'tie King Charles the First, of glorious memorye, unto my *ffather* in ffee, who, by the said grant thereof, was created lord and proprietary of the said provynce, to hold to him, his heirs and assigns forever; besydes which, there is a particular clause directing the making of lawes by him and his heirs, by and with the advise of the ffreemen, or of the deputyes and delegates of the ffreemen of the said provynce, for the tyme *beinge* should think *fitt* accordinge; to which grant, power and discretion all the lawes which have hitherto beene made in the said province have been alwayes made. And the lord and proprietary of the said provynce, with the freemen and the deputyes, and delegates and deputyes of the ffreemen, thus assembled for these purposes, make the supreme court of this provynce, under the name and title of the generall assembly of the said provynce; besides which there were other courts, constituted by my said father, and still continued as courts of judicature, namely: a provinciall court, beinge next to the assembly of the highest court of judicature there, and having cognizance of all causes, as well relating to lawe as equity and the admiralty, with power to correct and amend the errors of all the inferior courts; alsoe a court of lawe in every county, of the name of the county court of each particular

county, and one general court for the probate of wylls and granting of administrations.

To the 4th. No answer cann be given in particular here, the records being in the said provynce, and necessarily remayneing there; nor could he, in case I were there, give any answer which could be satisfactory or certayne without returneing the copyes of the said records, which would make upp a long and very tedious volume; for the said generall assembly meets very often, and the lawes which are made are generally temporary and to continue only for three years, to the end that experience may inform us whether they will answer the ends for which they are intended. And where the necessity and exigencies of the provynce doe not enforce them to make any particular lawes, they use no other lawe than the lawe of England.

To the 5th, 6th. I answer as to castles and forts, there are none; soe that if an enemy should land there he would not finde any place wherein he may fix himselfe. Every county hath its trained bands, the number of which are proportionable to the inhabitants of each county for the tyme beeinge, and cannot be given by me here with any certainty. There is besydes three troops of horse, consisting of about 180 in all, which have been of late kept on foote for the security of the provynce since the late rebellion in Virginia begann.

To the 7th, I answer that I doe not know of any privateers or pirates frequenting those waters.

To the 8th, 9th. I answer, as to the neighbors, they are either English or Indians. The English neighbours knowe their own strengths, of which I can give no acco't. As to the immediate next, Indian neighbours, their strength and numbers are not considerable. They lyveing under several distinct governments, some having two hundred, some three hundred, some five hundred subjects; and there is generally a good correspondence kept with them all. The more remote Indians are more numerous; but with those this provynce hath little correspondence, nor can it by any reasonable conjecture be guessed what their strengths are. As to the trade of those Indians with whom the provynce corresponds, it is not considerable. They are generally an idle people, who take care for anything but foode, which they gayne by huntinge and fishinge; and sometimes they sell the English the skynns of such beasts as they kill, which is their only commodity that they have to sell, and it is not considerable.

To the 10th, I answer that the boundaryes, longitude and latitude of this provynce are well described and sett forth in a late mapp or

chart of this provynce lately made and prepared by one Augustino Herman, an inhabitant of the said provynce, and printed and publiquely sold in London by his majestie's licence, to which I humbly referr, for greater certaynty, and not to give their lord'ps the trouble of a large, tedious description here, but as to the number of acres patented and settled or unsettled, it is impossible to give any guess at them here, or to have any acc't of them, in case I were there, otherwise then by causing a review of all the grants which have passed, and which would require a great tyme and charge, and a greater number of persons to be employed therein, then cann be easily procured.

To the 11th, 12th, I answer that the principal place or towne is called St. Marie's, where the generall assemblye and provinciall court are kept, and whither all shipps tradeing there doe in the first place resort. Butt it cann hardly be called a towne, it beeing in length by the water about five miles, and in breadth, upwards, towards the land, not above one myle, in all which space, excepting only my owne house and buildings, wherein the said courts and publique offices are kept, there are not above thirty houses, and those at considerable distance from each other; and the buildings (as in all other parts of the provynce) very mean and little, and generally after the manner of the meanest farme houses in England. Other places wee have none that are called or cann be called townes, the people there not affecting to build near each other, but soe as to have their howses near the watters, for conveniencye of trade, and their lands on each syde of and behind their houses, by which it happens that in most places there are not 50 houses in the space of 30 myles; and for this reason it is they have beene hitherto only able to divide this provynce inty counttyes, without beeing able to make any subdivisions into parishes or precincts, which is a work not to be effected untill it shall please God to increase the number of the people, and soe to alter their trade as to make it necessary to build more close and to lyve in towns.

To the 13th, I cannott answer otherwise then by referring to the printed mapp before mentioned.

(This document contains 25 answers in all, and is signed at end):

London, the 26th March, 1678.

CH. BALTEMORE.

Indorsed:

26 March, 1678.

Answer of the Lord Baltemore to the queryes about Maryland. Rec'd on ye 1st of Ap., 1678.

I certify that the foregoing is a true and authentic extract taken from the volume above named.

JOHN McDONAGH,
Record Agent.

June 1st, 1871.

No. 96—A.

State Papers—Colonial Entry Book, vol. 52, fol. 1. April 10th, 1676.

JOURNAL AND ENTRY OF PAPERS CONCERNING MARYLAND AND THE GOVERNMENT THEREOF.

Introduction.

His ma't'e having been pleased to dissolve and extinguish the late councill of trade and foreign plantacons, and to commit what was under their inspection and management to a comm'ttee of the privy councill, appointed for matters relating to trade and foreign plantations.

Their lord'ps on ye 10th of April, 1676, sign a circular letter, w'th severall heads of inquiry to ye Lord Baltemore, Lord Proprietary of Maryland.

The letter is as followeth :

Circular Letter to ye Lord Baltemore.

After our very hearty commendations to ye lordships, his maj't'e having in his wisdom thought fit to supersede the commission by which his council of trade and foreign plantations lately acted, and thereby restoring all the business of that nature to its accustomed chanel of a committee of his privy council. And his maj't'e having more especially committed to a select number of the board, whereof we are, the care and management of things relating to his plantations, we have therefore thought it convenient to give y'r l'd'p advertis'm't thereof, and because we do not as yet find ourselves enabled to give his maj't'e such account of the state and condition of that colony as his royall service and the dependence thereof upon the Crown does

require. We have therefore thought fit to send yo'r lo'p (as we have done to others) some heads of inquiry, here annext, the better to guide your lordship in the method of that state and representation of things w'ch we expect from your lordship, and doe desire it may be done with all convenient speed.

And so not doubting of your lordship's care to advise us further in all matters that may, from time to time, conduce to his maj't'es service, our better discharge of ye trust reposed in us, we bid your lordship very heartily farewell.

From the council chamber at Whitehall, this tenth of April, 1676.

The heads of inquiry are as foll——:

1. What councils, assemblies and courts of judicature are within ye province, and of what nature and kind?

2. What courts of judicature relating to ye admiralty?

3. Where the legislative and executive powers of the government are seated?

4. What statutes, laws and ordnances are now made and in force?

5. What number of horse on foot in ye province; whether they be trained bands or standing forces. How they are armed, divided and exercised?

6. What castles and forts are within your province, and how situated and fortified; as also, what stores and provisions they are furnished withall?

7. What number of privatees or pirates do frequent ye coast; what their burthens are, the number of their men and guns, and the names of the commanders?

8. What is the strength of your bordering neighbors, whether Indians or of any other nation, by sea and land; and what is the state and condition of their trade and commerce?

9. What correspondency doe you keep with your neighbors?

10. What are the boundaries, longitude, latitude and contents of land within ye province, what number of acres patented, settled or unsettled, and how much is manurable land?

11. What are the principal towns and places of trade, and what manner of buildings are most used in the colony—as to ye strength and largeness of them?

12. How many parishes, precincts or divisions are within your lo'ps province?

13. What rivers, harbors and roads are within ye province, and of what depths and soundings they are?

I certify that the foregoing is a true and authentic extract taken from the volume above named.

JOHN McDONAGH,
Record Agent.

June 4th, 1871.

No. 113.

State Papers—Colonial Entry Book—Vol. 52, No. 86-'7. April 2d, 1681.

Letter from his Majesty to the Lord Baltimore.

Right trusty and well beloved, we greet you well: Whereas by our letters patent, bearing date the fourth day of March last past, we have been graciously pleased of our royall bounty and the singular regard wee have to the merits and services of Sr Will'm Penn, deceased, to give a grant to our trusty and well beloved subject William Esq'r., son and heir to the said Sr William Penn, a certain tract of land in America by the name of Pensilvania, as the same is bounded on the East by Delaware river from twelve miles distance Northwards of New Castle town on to the three and fortieth degree of Northern latitude, if the said river doth extend so far Northwards; and if the said river shall not extend so far Northward, then by the said river so farr as it doth extend, and from the head of the said river the Eastern bounds to be determined by a meridian line to be drawn from the head of the said river onto the said three and fortieth degree, the said province to extend Westward five degrees in longitude, to be computed from the said Eastern bounds, and to be bounded on the North by the beginning of the three and fortieth degree of Northern latitude, and on the South by a circle drawn at twelve miles distance from New Castle Northwards and Westwards onto the beginning of the fortieth degree of Northern latitude, and then by a straight line Westward to the limit of longitude above mentioned, as by our said lres. patents doth particularly appear. And to the end that all due encourage-

ment be given to ye said William Penn in the setlement of a plantation w'thin the said country, we do hereby recommend him, his deputies and officers employed by him, to your friendly aid and assistance, willing and requiring you to do him all the offices of good neighborhood and amicable correspondence which may tend to the mutual benefitt of our subjects within our provinces onder your respected proprieties; and more especially we doe think that in order hereonto you do appoint with all convenient speed some person or persons who may in conjunction with the agent or agents of the said William Penn make a true division and separation of the said provinces of Maryland and Pensilvania, according to the bounds and degrees of Northern latitude expressed in our said l'res patents by settling and fixing certain land marks where they shall appear to border opon each other for ye preventing and avoiding all doubts and controversies that may otherwise happen concerning the same. And so wee bid you very heartily farewell.

Given at our court, at Whitehall, this second day of Aprill, in the 33d year of our reign.

By his ma'ts command.

CONWAY.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

No. 114.

State Papers—Colonial—Maryland—Vol. 43, No. 138. September 16th, 1681.

7m. 6w.
London, 16, 7, 1681.

Friends:

I hope I doo not improperly call you soe, because in being soe you will exremely befriend yourselves as well as perform an act of duty to the king and justice to me. I am equally a stranger to you

all, but you being represented men of substance and reputation in your part of the bay, which I presume falls within my pattent, I chose to take this opportunity to begin our acquaintance, and by you with the rest of the people on your side of my country, and doe assure you and them that I will be soe farr from taking any advantage to draw great proffits to myselfe that you shall find me and my government easy, free and just; and as you shall study be faire and respectfull to me and my just interests, I will not be short of giving you all reasonable assurance on my part that I shall live kindly and well with you; and for this you have my word, under my hand.

I think fitt to caution you (if within my bounds, as I am ready to believe, but I desire noe more than my owne) that none of you pay any more taxes or sessments by any order or lawe of Maryland; for if you doe it will be greatly to your owne wrong, as well as my prejudice; though I am not conscious to myselfe of such an insufficiency of power here with my superiors as not to be able to wether that difficulty if you should. But the opinion I have of the Lord Baltimore's prudence as well as justice, and of the regard to your owne interests and future good of your posterity, makes me to waive all objections of that nature, and to hope we shall all doe the thing that is just and honest (which is allwaies wise) according to our respective stations.

I have noe more to add but my good wishes for all your happiness, and that, by the help of Almighty God, next spring you shall have some testimony of my best endeavours to contribute towards it as becomes my duty to God, to the king, and to theire people.

I am, your reall friend,

WM. PENN.

For James Hirsetby, Edward Jones, Augustin Harman, George Oldfield, Henry Ward and Henry Johnson, at theire plantation in Pennsylvania.

Endorsed:

Copies of a letter from Wm. Pen to Fregby, Jones and others.

Rec'd inclosed from ye Lord Baltemore, Ap. 24, 1682.

Caution that they pay not taxes to my Lord Baltemore.

I certify that the foregoing is a true and authentic copy taken from the volume above named.

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

Maryland—Sc :

At a circuit court of the Eighth judicial circuit of the state of Maryland, begun and held for Somerset county, at Princess Anne town, on the first Tuesday of October, being the third day of the same month, in the year of our Lord one thousand eight hundred and fifty-four :

Present—The Hon'ble James A. Stewart, circuit judge, Nathan J. Langford, sheriff.

LEVIN WOOLFORD, Cl'k.

The following proceedings were had, to-wit :

Somerset county, to-wit :

The state of Maryland,
To the sheriff of Somerset county—Greeting :

You are hereby commanded to take John Cullen, late of Somerset [Place of seal.] county, yeomen, if he be found in your bailiwick, and him, in your custody, you safely keep, so that you have his body before the county court of Somerset, to be held at Princess Anne on the fourth Monday of November instant, to answer unto Severn Tyler in a plea of trespass, on the case, &c. Hereof fail not at your peril; and have you then and there this writ.

Witness, the Honorable Asa Spence, chief judge of the Fourth judicial district of Maryland, the 19th day of May, Anno Domini, 1851. Issued the 15th day of November, Anno Domini, 1851.

WM. T. G. POLK, Cl'k.

J. W. C.
W. S. W.

"Cepi,"

JOS. G. POLK, Sheriff.

Copy Docket Entries from the Trial Docket of October Term, 1854.

Severn Tyler.—Case nar amended nar pleas, replication. Demurrer and joinder filed. 1854, Sept'r 14—Judgment for plaintiff on the demurrer. 1854, October 6—Jury ordered, empannelled and sworn. 1854, October 10th—Verdict for plaintiff, and damages assessed at $300 00; judgment on verdict nisi.

John Cullen.

Lybrand Thomas.—Case nar amended, nar pleas, replication. Demurrer and joinder filed. 1854, Sept'r 14—Judgment for plaintiff on the demurrer. 1854, Oct. 13—Judgment for $1,000 00, damages and costs, to be released on the payment of $150 00, with interest from this day until paid, and costs.

Same.

Thomas Evans.
James Sterling, of Jas.
Emory Riggin.
Severn Riggin.
Elijah Somers.
Southey Sterling.
John Riggin, of Elisha.
John B. Stevenson.
Solomon Pearson.
William J. Byrd, Esq.
James T. Daniel.
Gabriel H. Rowe.
William G. Hoofman.
Lazarus Wilson.
William Evans, of Old Jeans island.
William G. Hoofman.
Lazarus Wilson.
William Evans, of Old Jeans island.

Southey Miles.
John Coulboune.
William G. Hoofman.
Solomon Bradshaw.
William I. Hoofman.

Henry Thomas.
Solomon Pearson.
Severn Riggin.
Elijah Somers.
Southey Sterling.
John B. Stevenson.
Emory Riggin.
John Riggin.
James Sterling.

Maryland, Somerset county, to-wit:

John Cullen, late of Somerset county, yeoman, was attached to answer unto Severn Tyler, in a plea, wherefore, with force and arms, &c., at the county aforesaid, he seized, took and detained the goods

and chattels of the said Severn, there then found, being of large value, and carried the same away, and converted and disposed thereof to his own use, and other wrongs to the said Severn, then and there did against the peace government and dignity of the state of Maryland, and to the great damage of the said Severn, and whereupon the said Severn, by William S. Waters and J. W. Crisfield, his attorneys, complains that the said John Cullen, heretofore, to-wit, on the first day of April, eighteen hundred and fifty-one, at the county aforesaid, took and detained the said goods and chattels of the said Severn, to-wit, one schooner or vessel, called "Fashion," then and there found, and being of large value, to-wit, of the value of one thousand dollars, and carried the same away and converted and disposed of the same to his own use, and other wrongs to the said Severn, then and there did, against the peace, government and dignity of the said state, and to the damage of the said Severn, in the sum of one thousand, for which he brings suit, &c. And the said Severn further complains that the said John Cullen, on the said first day of April, eighteen hundred and fifty-one, at the county aforesaid, seized, took and carried away other the goods and chattels of him, the said Severn, to-wit, one other schooner called "Fashion," then and there found, and being of large value, to-wit, of the value of one thousand dollars, and detained the same for a long space of time, to-wit, for the space of four months, whereby the said vessel or schooner was greatly damaged and lessened in value, to-wit, to the value of five hundred dollars, and the said Severn was put to great trouble and expense, and was obliged to pay, and did pay, large sums of money, amounting in the whole, to a large sum of money, to-wit, to the sum of five hundred dollars, to regain and recover his said schooner, and other wrongs to the said Severn; the said John then and there did, against the peace, government and dignity of the said state and to the damage of the said Severn in the sum of one thousand dollars, current money, and therefore this suit is brought, &c.

JOHN DOE,
RICH'D ROE,
Pledges, &c.

J. W. CRISFIELD,
W. S. WATERS,
WM. DANIEL,
For Pl'ff.

Severn Tyler
vs.
John Cullen. } Nav. Plea, Replication, Demurrer, &c.

And the said plaintiff saith that the second and this replication of him the said plaintiff, and the matters and things therein contained in manner and form as the same are above stated and set forth are sufficient in law for him the said plaintiff to have and maintain his aforesaid action thereof against him the said defendant, and the said plaintiff is ready to verify and prove the same, as the court here shall direct and award. Wherefore, inasmuch as the said defendant hath not answered the second and third replications, nor hithirto in any manner denied the same; the said plaintiff prays judgment and his damages, by reason of the said trespass in the said declaration mentioned to be adjudged to him, &c.

J. W. CRISFIELD,
WM. S. WATERS,
WM. DANIEL,
Attys for Pl'ff.

John Cullen at suit, Severn Tyler.

And the said defendant, by Isaac D. Jones and William Tingle, his attorneys, as to the first replication of him, the said plaintiff to the second plea of him, the second defendant, and whereof the said plaintiff hath prayed that the same may be inquired of by the country doth the like, &c. And the said defendant, by his attorneys aforesaid, saith that the second and third replications of him the said plaintiff to the second and third pleas of said defendant replied. And the matter therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof, against him, the said defendant, and that he, the said defendant, is not bound by the law of the land to answer the same, and this he, the said defendant, is ready to verify, wherefore, for want of a sufficient replication in this behalf, he, the said defendant prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

ISAAC D. JONES,
WM. TINGLE,
Attys for defendant.

Severn Tyler
vs.
John Cullen.

Nav. Pleas, &c.

And the said Severn, as to the first plea of the said John above pleaded, wherein he puts himself upon the country doth the like; and the said Severn as to the second plea of the said John above pleaded, saith that he ought not, by reason of any thing by the said John in in his said second plea above pleaded, to be precluded from having and maintaining his action aforesaid against him, the said John, because he, the said Severn, protesting that he the said John Cullen at the time when &c. was not a justice of the peace, and was not credibly informed that certain persons—to-wit: John Tyler, William G. Hoffman, Alfred Evans, Elzey Coalbourn, and Thomas Magers, free negro boatman belonging to the said boat or vessel called the "Fashion," had been, and then and there were engaged in using a scoop, otherwise called a drag, otherwise called a dredge, in taking or catching oysters in the water of this state, within the limits of Somerset county aforesaid, on board of the said boat or vessel, and had employed and were then employing the said boat or vessel, using a scoop, otherwise called a drag, otherwise called a dredge, being an instrument prohibited by law, such use in taking and catching oysters within the waters of this state and within the body and limits of Somerset county aforesaid, whereby the said boat or vessel, together with her papers, furniture, tackle, and apparel, and all things on board of her, became and were forfeited to the said state in manner and form, as the said John hath in his second plea above alleged; for replication, nevertheless, the said Severn saith, that after the said John had represented to the said justice the said charge in his said second plea mentioned, and before the rendition of the said judgment, the said John Tyler, William G. Hoffman, Alfred Evans, Elzey Coulbourn, and Thomas Magers, free negro, did plead before the said justice that they were not guilty of the said charge, so as aforesaid represented to him by the said John Cullen, and alleged that they had not been, and were not at the time of the said arrest, engaged in using a scoop, otherwise called a drag, otherwise called a dredge, in taking oysters in the waters of this state and within the limits of Somerset county aforesaid, on board of the said boat or vessel, and were not employing said boat or vessel then and there in using a scoop, otherwise called a drag, otherwise called a dredge, in taking or catching oysters in the waters of this state and

within the limits of Somerset county aforesaid; and the said Severn further said that after the rendition of the said judgment of condemnation, mentioned in the said second plea of the said John, and within ten days thereafter the said John Tyler, one of the boatmen on board of the said schooner, executed a bond in the penalty of two thousand eight hundred dollars, with two sufficient sureties approved by the said John B. Stevenson, justice of the peace, conditioned to prosecute his appeal from said judgment with effect to the next county court of Somerset county, which should thereafter occur before the judge thereof; and afterwards, and within ten days after the rendition of the said judgment of condemnation, appealed from the said judgment to Somerset county court at the term thereof then next afterwards ensuing; and the said Severn further saith, that afterwards, at the term of the said court next afterwards holden, to-wit, at a county court of the fourth judicial district, beginning and held at the courthouse in and for Somerset county aforesaid, on the nineteenth day of May, in the year eighteen hundred and fifty-one, the said John Tyler, according to the act of assembly in such cases made and provided, prosecuted his said appeal from the said judgment of condemnation mentioned in the said John T's second plea, so as aforesaid rendered by the said John B. Stevenson, and such proceedings were thereupon had in the said court upon the said appeal of him, the said John, as aforesaid prosecuted, that afterwards and before the impetration of the original writ in this cause, to-wit, one the seventh day of June, eighteen hundred and fifty-one, by the consideration and judgment of the said court, the said judgment of condemnation, so as aforesaid rendered by the said John B. Stevenson, in the said John Cullen's second plea above alleged, was reversed and made void, and of none effect, to-wit, at the county aforesaid, as by the said record and proceedings thereof still remaining in the said court more fully and at large appears, which said judgment, so as aforesaid rendered by Somerset county court in that behalf still remains in full force and effect and not in the least reversed or made void.

And the said Severn, as to the third plea of the said John, above alleged, saith that he ought not, by reason of anything by the said John in his third plea, above pleaded, to be precluded from having and maintaining his action aforesaid against him, the said John, because he, the said Severn, protesting that the said John Cullen, at the time, when, &c., was not a justice of the peace, and, upon his own view, it did not appear to him that sundry persons, to-wit: John

Tyler, William G. Hoffman, Alfred Evans, Elzey Coalbourn and Thomas Mages, free negro, boatman, belonging to the said boat or vessel called the "Fashion," were then and there engaged in using a scoop, otherwise called a drag, otherwise called a dredge, being an instrument prohibited by law from such use in taking or catching oysters in the waters of this state, and within the body and limits of Somerset county aforesaid, whereby the said boat or vessel, together with her papers, tackle and apparel, and all things on board of the same, became, and were, forfeited to the said state, in manner and form as the said John, in his said third plea, hath above alleged; for replication, nevertheless, in this behalf, the said Severn saith, that after the said John had represented to the said justice the charge in his said third plea mentioned, and before the rendition of the said judgment, the said John Tyler, William G. Hoffman, Alfred Evans, Elzey Coalbourn, and Thomas Magers, free negro, did plead before the said justice that they were not guilty of the said charge, so as aforesaid represented to him by the said John Cullen, and alleged that they had not been, and were not at the time of said arrest engaged in using a scoop, otherwise called a drag, otherwise called a dredge, in taking oysters in the waters of this state and within the limits of Somerset county aforesaid on board of the said boat or vessel, and were not employing the said boat or vessel then and there in using a scoop, otherwise called a drag, otherwise called a dredge, in taking or catching oysters in the waters of the state and within the limits of Somerset county aforesaid.

And the said Severn further saith, that after the rendition of the said judgment of condemnation, mentioned in the said third plea of the said John, and within ten days thereafter, the said John Tyler, one of the boatmen on board of the said schooner, executed a bond in the penalty of two thousand eight hundred dollars, with two sufficient sureties, approved by the said John B. Stevenson, justice of the peace, conditioned to prosecute his said appeal from said judgment with effect to the next county court of Somerset county which should thereafter occur before the judges thereof; and afterwards, and within ten days after the rendition of said judgment of condemnation, appealed from the said judgment to Somerset county court at the term thereof then next afterwards ensuing. And the said Severn further says, that afterwards, at the term of the said court next afterwards holden, to-wit: at a county court of the Fourth judicial district, begun and held at the courthouse, in and for Somerset county aforesaid, on the nineteenth day of May, in the year eighteen hundred and fifty-

one, the said John Tyler, according to the act of assembly in such case made and provided, prosecuted his said appeal from the said judgment of condemnation, mentioned in the said John's third plea, so as aforesaid rendered by the said John B. Stevenson; and such proceedings were therefore had in the said court, upon the said appeal of him, the said John Tyler, as aforesaid prosecuted; that afterwards and before the impetration of the original writ in this cause, to-wit: on the seventh day of June, in the year eighteen hundred and fifty-one, by the consideration and judgment of the said court, the said judgment and condemnation, so as aforesaid rendered by the said Jno. B. Stevenson, in the said John Cullen's third plea, above alleged, was reversed, and made void and of none effect, to-wit: at the county aforesaid, as by the said record and proceedings thereof, still remaining in the said court, more fully and at large appears, which said judgment, so as aforesaid rendered by Somerset county court in that behalf, still remains in full force and effect, and not in the least reversed or made void; and this the said Severn is ready to verify: wherefore he prays judgment, and his damages by him sustained, by reason of the committing of the said trespass, to be adjudged to him, &c.

J. W. CRISFIELD,
WM. S. WATERS,
WM. DANIEL,
Attorneys for the Plaintiff.

Severn Tyler
vs.
John Cullen.

Trespass, &c., Nar.

1. And the said John Cullen, the defendant in this action, by William Tingle and Isaac D. Jones, his attoneys, comes and defends the force and injury, when, &c., and says that he is not guilty of the said supposed trespass laid to his charge, or any part thereof, in manner and form as the said Severn Tyler hath above thereof complained against him; and of this the said John Cullen puts himself upon the country, &c.

2. And the said defendant, for further plea in this behalf, by leave of the court, by his said attorneys, says: That at the time when the said supposed trespass in the said declaration are alleged to have been

committed, to-wit, on the eleventh day of March, in the year eighteen hundred and fifty-one, and for a long time previous thereto, and were since, the said defendant was a justice of the peace of the state of Maryland in and for Somerset co., duly commissioned and qualified, to-wit, at the said county, and being such justice, the said defendant was credibly informed, to-wit, on the day and year aforesaid, at the said county, that certain persons, to-wit: John Tyler, William G. Hoffman, Alfred Evans, Elzey Coulbourne and Thomas Magers, free negro, boatman, belonging to the said boat or vessel called the "Fashion," and then and there, were engaged in using a scoop, otherwise called a drag, in taking and catching oysters in the waters of this state, within the limits of Somerset county aforesaid, on board of the said boat or vessel, and had employed, and were then and there employing, the said boat or vessel in using a scoop, otherwise called a drag, otherwise called a dredge, being an instrument prohibited by law from such use in taking and catching oysters in the waters of this state and within the body and limits of Somerset county aforesaid, whereby the said boat or vessel, together with her papers, furniture, tackle and apparel, and all things on board of the same, became and were forfeited to the said state, to-wit, on the day and year aforesaid, of the said county; and the said defendant, as justice of the peace as aforesaid, by virtue of the power and authority vested in him by law, and not otherwise, did upon said credible information afterwards, to-wit, on the day and year aforesaid, at the said county, seize and take into his possession and detain the said boat or vessel in order to the execution of the penalties and prohibitions of the acts of assembly in such case made and provided, and did then and there arrest and take into his custody all the said boatmen belonging to the said boat or vessel, and did then and there carry them before John B. Stevenson, who was then and there a justice of the peace of the said state, in and for the said county, and did then and there represent to the said Stevenson, justice of the peace as aforesaid, the breach of law committed as aforesaid; and did then and there name to him, the said Stevenson, a justice as aforesaid, the witnesses to support the said charge. And the said defendant in fact saith, that the said John B. Stevenson, justice of the peace as aforesaid, did afterwards, to-wit, on the day and year aforesaid, at the said county, render judgment that the said boatmen were guilty as charged as aforesaid, and did fine each of said boatmen the sum of ten dollars, and did also then and there adjudge and condemn as forfeited to the said state the said boat or vessel, in

the possession of the said defendant, as justice aforesaid, together with her papers, furniture, tackle and apparel, and all things on board of her at the time of her seizure by the said defendant as aforesaid, and did then and there pronounce the same to be the property of the said state; and so the said defendant in fact saith, that then and there he seized and detained the said boat or vessel as a justice of the peace as aforesaid, for the cause aforesaid, by reason of her having been forfeited to the said state as aforesaid, and not otherwise, and further detained the same by reason of the said judgment of condemnation, so rendered as aforesaid by the said Stevenson as a justice of the peace as aforesaid, and not otherwise. And the said defendant further in fact saith, that the seizure and detention of the said boat or vessel by the said defendant as aforesaid, and the seizure and detention thereof complained of in the said several counts of the said declaration of the said plaintiff, are the same seizure and detention, and not others or divers, to-wit, on the day and year aforesaid, at the same county; and this the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff his action aforesaid thereof to have or maintain, ought, &c.

3. And the said defendant for further plea in this behalf, by leave of the court, by his said attorneys, says, that the time when the said supposed trespasses in the said declaration are alleged to have been committed, to wit, on the eleventh day of March, in the year eighteen hundred and fifty-one, and for a long time previous thereto, and ever since the said defendant was a justice of the peace of the State of Maryland in and for Somerset county, duly commissioned and qualified, to wit, at the said county, and being such justice of the peace, upon his own view, it appeared to him on the day and year aforesaid, at the said county, that sundry persons, to wit, John Tyler, William G. Hoffman, Alfred Evans, Elzey Coulbourn and Thomas Magers, free negro, boatman, belonging to the said boat or vessel, called the "Fashion," were then and there engaged in using the scoop, otherwise called a drag, in taking and catching oysters in the waters of this State, within the limits of Somerset county aforesaid, on board of the said boat or vessel, and were employing then and there the said boat or vessel in using a scoop, otherwise called a drag, otherwise called a dredge, being an instrument prohibited by law from such use in taking or catching oysters within the waters of this State and body and limits of Somerset county aforesaid, whereby the said boat or vessel, together with her papers, furniture, tackle and apparel, and all

things on board the same, became and were forfeited to the said State, to wit, on the day and year aforesaid, at the said county; and the said defendant, as justice of the peace as aforesaid, by virtue of the power and authority vested in him by law, and not otherwise, did afterwards, to wit, on the day and year aforesaid, at the said county, seize and take into his possession and detain the said boat or vessel in order to the execution of the penalties or prohibitions of the acts of assembly in such case made and provided, and did then and there arrest and take into his custody all the said boatmen belonging to the said boat or vessel, and did then and there carry the said boatmen before John B. Stevenson, a justice of the peace of the said State, in and for the said county, and did then and there represent to the said Stevenson, justice of the peace as aforesaid, the breach of law committed as aforesaid, in the view of the said defendant as aforesaid, and did then and there name to the said Stevenson, as justice as aforesaid, the witnesses to support the said charge. And the said defendant in fact saith, that the said John B. Stevenson, justice as aforesaid, did afterwards, to wit, on the day and year aforesaid, at the said county, render judgment that the said boatmen were guilty of the offense charged against them as aforesaid, and did fine each of said boatmen the sum of ten dollars, and did, also, then and there, judge and condemn as forfeited to the said State the said boat or vessel in possession of the said defendant, as justice of the peace as aforesaid, together with her papers, furniture, tackle and apparel, and all things on board of her at the time of her seizure by the said defendant as aforesaid, and did then and there pronounce the same to be the property of the said State. And so the said defendant in part saith, that he seized and detained the said boat or vessel as a justice of the peace as aforesaid, for the cause aforesaid, and by reason of the said boat or vessel having been forfeited to the said State as aforesaid, and not otherwise, to wit, on the day and year aforesaid at the said county; and that he further detained the same by reason of the said judgment of condemnation, so rendered as aforesaid by the said Stevenson as justice of the peace as aforesaid, and not otherwise; and the said defendant in part saith, that the seizure and detention of the said boat or vessel by this defendant as aforesaid, and the seizure and detention thereof complained of in the said several counts of the said declaration of the said plaintiff, are the same seizure and detention, and not other or divers, to wit, on the said day and year at the said

county; and this the said defendant is ready to verify. Wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

WM. TINGLE,
ISAAC D. JONES,
Attorneys for defendant.

State of Maryland—Somerset county, sct. :

I, Levin L. Waters, clerk of the Circuit court for Somerset county, hereby certify that the within is a true copy of the docket entries and proceedings, No. 14, of the trial docket of October term, 1854, of the Circuit court for Somerset county.

In testimony whereof I hereto subscribe my name and affix the seal of the said Circuit court, this 30th day of May, 1872.

[U. S. stamp.] LEVIN L. WATERS, Cl'k.

Copy Docket Entries from the Appeal Docket of May Term, 1851.

John Tyler.—Appeal from the judgment of John B. Stevenson, Esq. Petition, judgment and bond filed. Issues filed. Plea not guilty. 1851, June 5th—Jury impannelled and sworn. Bailiff sworn. 1851, June 6th—Verdict for the appellant on all the issues. 1851, June 7th—Judgement reversed.

The state of Maryland.

Appellants' Witnesses:

John B. Stevenson.
David Tyler, It.
John Marshall, It.
Thomas Tyler, It.
William Tyler, It.
William Evans, It.
James H. Hoffman, It.

Peter Evans, It.
Josiah Tyler.
Solomon Bradshaw.
Wm. G. Hoffman, It.

State's Witnesses :

Benjamin Lankford, It.
James Lawson, It.
Sam'l Lawson, It.
Thomas Dize, It.
David Tyler.
John Marshall.
John W. Johnston, It.
Severn Riggin, It.
John Riggin, It.
Severn Tyler.
Emory Riggin.
John Riggin, It.
John Cullen, It.
John Miles, of Wm.
Southey Sterling, It.
Elijah Somers, It.
John B. Stevenson, It.

To the Honorable the Judges of Somerset county court :

The petition and appeal of John Tyler, Somerset county, respectfully showeth that your petitioner conceives himself to be aggrieved by a judgment of John B. Stevenson, a justice of the peace of the state of Maryland, in and for Somerset county aforesaid, a copy of which is herewith filed as a part of this petition and marked exhibit A.

Your petitioner prays that the said judgment may be examined and heard upon the allegations and proofs, and that the same may be reversed, and that he may have such other relief as his case demands.

WM. S. WATERS,
Att'y for Appellant.

Exhibit "A," as follows:

March, 13th day, 1851.

State of Maryland vs. John Tyler, William Hoffman, Alfred Evans, Elzey Coulbourn and Thomas Magers, free negro boatmen, belonging to the schooner "Fashion," of Snow Hill.

Parties brought before me by John Cullen, a justice of the peace of state of Maryland, in and for Somerset county, charged with having violated the laws of this state, by using scoops or drags in taking or catching oysters in the waters of the state. Day of trial fixed Thursday, 13th day of March inst.

March, 13th day, 1851.

Judgment on trial that the said John Tyler, William G. Hoffman, Alfred Evans, Elzey Coulbourn and Thomas Magers, free negroe, are guilty of having violated the law of this state, by taking or catching oysters in the waters of this state, with scoops or drags, and each of the said parties is fined the sum of ten dollars. And the schooner "Fashion," in possession of the said John Cullen, J. P., is hereby adjudged and condemned as forfeited, together with her papers, furniture, tackle and apparel, and all things on board of her at the time of her seizure. And the said schooner is hereby pronounced to be forfeited. Witness, my hand.

J. B. STEVENSON, J. P.

Know all men by these presents, that we, John Tyler, Severn Tyler, Thomas Miles, are held and firmly bound unto the state of Maryland, in the just and full sum of two thousand eight hundred dollars, current money of Maryland, to be paid to the said state, or its certain attorney, to which payment well and truly be made and done, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and date, this twenty-first day of March, in the year eighteen hundred and fifty-one.

Whereas the above bound John Tyler thinks himself aggrieved by a judgment of condemnation, rendered against the schooner "Fashion," of which he was boatman, on the thirteenth day of March, eighteen

hundred and fifty-one, by John B. Stevenson, a justice of the peace of the state of Maryland, in and for Somerset county, in which judgment, the said schooner "Fashion" was pronounced to be forfeited to the said state, from which said judgment the said John Tyler is about to appeal to the next county court of Somerset county, before the judges thereof. Now the condition of the above obligation is such that if the said John Tyler shall prosecute with effect his appeal to the next county court of Somerset county, to be held after this date, then this obligation to be void, else to be and remain in full force and virtue in law.

JOHN TYLER. [Seal.]
SEVERN TYLER. [Seal.]
THOMAS MILES. [Seal.]

Signed, sealed, and delivered
in the presence of

SOLOMON BRADSHAW.

John Tyler vs. the State of Maryland.

In Somerset County Court. An Appeal from the Judgment of John B. Stevenson, Justice of the Peace.

State of Maryland, Somerset county, set. :

The state of Maryland complains and charges that the schooner "Fashion" has been unlawfully employed in taking oysters in the waters of this state with scoops or drags, contrary to the acts of assembly in such case made and provided.

And the said state further complains and charges that the schooner "Fashion," in the possession of some person to the said state unknown, by said person unknown has been unlawfully employed in taking oysters in the waters of this state with scoops or drags, contrary to the acts of assembly in such case made and provided.

And the said state further complains and charges that the schooner "Fashion," in the possession of some persons to the said state unknown, by said persons unknown has been unlawfully employed in taking oysters in the waters of this state with scoops or drags, contrary to the acts of assembly in such case made and provided.

And the said state further complains and charges that the schooner

"Fashion" has been unlawfully employed, to-wit, on divers days, between the thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty, and the thirteenth day of March, in the year of our Lord one thousand eight hundred and fifty-one, at the county aforesaid, in taking oysters in the waters of this state with scoops or drags, contrary to the acts of assembly in such case made and provided.

And the said state further complains and charges that the said schooner "Fashion," in the possession of some person or persons to the said State unknown, by said person or persons unknown, has been unlawfully employed, to-wit, on divers days between the thirteenth day of March in the year of our Lord one thousand eight hundred and fifty and the thirteenth day of March in the year of our Lord one thousand eight hundred and fifty-one, at the county aforesaid, in taking oysters in the waters of this state with scoops or drags, contrary to the acts of assembly in such case made and provided.

WILLIAM J. BYRD,
Dep. Att'y Gen'l.

JOHN H. DOVE,
Attorney for the state.

State of Maryland—Somerset county, sct.:

I, Levin L. Waters, clerk of the circuit court for Somerset county, hereby certify that the aforegoing is truly copied of the docket entries and proceedings No. 9, appeals of the May term docket of 1851, of Somerset county court.

In testimony whereof I hereto subscribe my name and affix the seal of the circuit court for Somerset county this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-two (1872).

LEVIN L. WATERS, Cl'k.

[U. S. stamp.]

Watkins Point Road.

The following is among the "orders agreed upon by ye com'rs of Sommersett countie this 17th of January, 1666-67":

Present—William Stevens, Capt. William Thorne, Mr. Jones, Mr. John Winder, Mr. Henry Boston, Mr. George Johnson and Mr. Stephen Horsi, high sheriffe.

The highway for ye countie of Sommersett, from ye landing place upon Capt. Goyeder's land in Pocomoke river to Morumsco dambs, near ye house of Robert Highnett, and from thence downe to ye head of Thomas Prices creek to ye head of William Coleborns creek; and from ye head of Will. Coleborns creek to Watkins point from ye dambs yl lyeth by Robert Highnett's, to ye lower dambs yt lyeth at ye head of Annamessick river; from thence to ye Lower dambs yl lyeth at ye head of Back creek of Manokin river; and from thence to ye head of Manokin river; and from thence to the head of Wicocomoco creek.

State of Maryland—Somerset County, to-wit:

I, Levin L. Waters, clerk of the circuit court for Somerset county, hereby certify that the foregoing is truly copied from Liber B, one of the record books now being and remaining in the office of the clerk of the circuit court for said county.

In testimony whereof I hereto set my hand and seal of said court, this twenty-eighth day of October, Anno Domini, eighteen and seventy-two.

LEVIN L. WATERS, Cl'k.

Under the same date and immediately following the order of the commissioners laying off the highway for Somerset county, is the erection of Somerset county into hundreds, from which the following is extracted—

"The Bounds of Annamessick Hundred."

"Annamessicke, beginning at Watkins pointe, running to the mouth of Morumisco creeke up ye Westernmost side of ye said creeke to Morumisco dambs, and from Watkins pointe to the North pointe of

Annamessecke river, and from thence, running up ye midst of ye neck of land called Desert."

State of Maryland—Somerset county, to-wit:

I, Levin L. Waters, clerk of the circuit court for Somerset county, hereby certify that the foregoing is truly copied from Liber B, one of the record books now being and remaining in the office of the clerk of the circuit court for said county.

In testimony whereof, I hereto set my hand and seal of said court, this twenty-eighth day of October, Anno Domini eighteen hundred and seventy-two.

LEVIN L. WATERS, Cl'k.

Endorsement:

Order laying off publick highway in Somersett countie, and order creating Annamessicke Hundred, 17 January, 1666-67.

Maryland Council Proceedings—Liber H. H., folio 268.

Commission to Stephen Horsey, Wm. Stephens, Wm. Thorn, James Jones, John Winder, Sidney Boston, George Johnson and John Whittington, to lay out a county, bounded on the South by a line drawn from Watkins point, being the North point of yt bay into weg., the river Wighco, (formerly called Wicocomaco, and afterwards Pocomoke, and now Wicocomaco again, dotg fall,) to the ocean on the East, Nanticke river on the North, and by the sound of Chesp. bay on the West, to be erected into a county by the name of Summerset, in honor of our dear Sister Lady Mary Summerset.

22 August, 1666.*

Note by General Wise.

Mr. Jones supposes Summerset was organized out of Dorchester. See same book. Worcester was carved out of Summerset by act of Assembly, 1742.

*This was before the line was run.

State Papers—Colonial Maryland—Vol. 43, No. 37. (June 12th, 1683.)

S'R.

Haveing given you formerly the trouble of many l'res, I blush to be still guilty of the same rudeness, and humbly begg you'll please to pardon me for these few lines, w'ch addresse themselves to you for a favour, w'ch I am assured ye will not be unwilling to grant me. That w'ch I presume to beg at your hands is that you'll favour me so far, that should Mr. Wm. Penn, (who is suddenly bound for England, as he hath lately assured me,) move his Maj'ie for any further order and comands in relacon to the bounds of Maryland and Penselvanea, that nothing be granted untill I am heard at the council board, and that nothing be obtained by Mr. Penn to the prejudise of my interest on Delaware river, where Mr. Penn pretends to hold a great part of my province by a title (as he saith) from His Highness, the Duke of York. In May or June next I will make my personall appearance and make my defence, w'ch I begg I may have granted me, for the unsettled condition of my affairs here will not allow me to take a voyage this shipping. In obtaining this favour for me, you'l infinitely oblige,

Most hon'ble sir,

Your faithful, humble, and most obediant servant,

C. BALTEMORE.

12th June, 1683.

Endorsed :

12th June, '83.

To the Right Hon'ble Lord Baltemore, S'r Lyonell Jenkins, one of his Maij'ties principal Secretaries of State, humbly pr'sent att White Hall.

Obt.,

MR. PENN.

Maryland, 12 June, 1683.

Certified to by :

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

State Papers—Colonial—Maryland—Vol. 43, No. 193.

PALUX, Decemb. 7th, 1683.

DEAR SIR:

The beginning of the last month I writt to you, and therein gave you my acknowledgm't for your obligeing lre of the 8th of 7 per, wherein you very kindly assured me that nothing would be concluded by the councill without hearing me or my agent, and that if I came over in the spring you believed I should find that businesse of Delaware undetermined. I hope (and by your favour I presume to assure myself) that I may be heard in person afore the lords of the councilll with proceed in a matter of that concerne to my interest; and w'ch gives me still the greater confidence I shall have liberty to appear in person to make out my right to Delaware is, that my father in his lifetyme, and since his decease I have petitioned his royal highness for a hearing of that matter, but his highnesse his greater affaires did not afford time for it whilst I was in Engl'd, so that since I sought for a hearing of that businesse so far as with good — manners became me towards his highnesse, it would now be somewhat hard that in my absence I should be concluded. S'r, it is a matter of that importance to me that I dare not comit the management of it to the best agents I can procure to act for me in my — absence; therefore I earnestly recommend to your kindnesse that you will continue moveing for some time to be given me for my appearing in person at the councill board, where I hope to be the latter end of May next, and shall then cleere all things soe as may fully satisfie the lords of his majestie's most honorable privy councill of my right to Delaware—that part I meane w'ch lyeth to the Southward of forty — Northerly latitude. And if my unkind neighbor Wm. Penn, or his agents, are able to make out that there were Dutch — seated Delaware afore my pattent for Maryland was granted (which will be somewhat hard to prove), I will then make it plainly appeare that such Dutch were usurpers, and were utterly disowned by the states of Hollanders. Of this I have undeniable testimonies, such as Mr. Penn will not withstand; and possibly then I shall be able to produce something under Penn's hand to the same purpose. S'r, I am so well armed and provided with proofs of this kind that I onely bagg a personall hearing, and that you will become a solicitor

for me therein, is the favour and kindness I beg at your hands, which I will gratefully owne as becomes one that already is.

Good s'r,

Y'r faithfull and obliged servant,

C. BALTEMORE.

Endorsed:

7th December, 1683. From my Lord Baltemore, concerning Mr. Pen. Rec'd 16 Feb., 168¾.

Addressed:

For Mr. William Blathwait, at Whitehall.

Certified to by

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

State Papers—Colonial Maryland—Vol. 43, No. 39.

Dec'r 11th, 1683.

Honered Sr.:

I know it is to great a boldness I take in giveing you the trouble so often, as I doe, with my letters, which I should not presume to doe, did not a very great concerne of mine lye afore the councill of which you are. It is I about a grant which I am assurd my ill neighbor, William Penn, is endeavouring, by his agents in England, to gett pog't, the great seale of noe lesse than one-third of my province. I meane that part which lyeth to the Eastward of Chessapeake bay, and is on Delaware river, to the Southward of 40 degree Northerly latitude which he pretends was seated by some Dutch afore my pattent for Maryland was granted, which neither he nor his agents are, as yet, able to prove, and whenever they doe it will signifie title to my prejudice, for I will sufficiently make it evident that if any Dutch were there at that time seated, they were but usurpers, and had usurped what they soe seated, being never ownd by the states of

Holland—nay, I will oblige myselfe to prove such were disowned by the states, if I may have liberty and time allowed me till May next, to appeare in person, at the councill board there, to defend my right which I hope you'l favor me so far as to procure for me, and I shall account myselfe highly obliged, and forever remaine Sr.,

Your humble serv't, most faithful serv't,

C. BALTEMORE.

11th December, 1683.

For the Right Hon'ble Sr. Lyonell Jenkinsone, of his majesties principall secretaries of state.

LD. BALTIMORE,

11th Dec'r.

Letter.

Maryland, 11th Dec'r, 1683.

Present at Whitehall.

I certify that the foregoing is a true and authenticated copy taken from the volume above named.

JOHN McDONOUGH,
Record Agent.

July 14th, 1871.

Colonial—State Papers—Maryland—Vol. 43, No. 191.

Feb. 12th, 1684.

A certain tract of land in America having been surrendered long since by ye Dutch to ye king and ever since in ye possession of it his royal highness. His royal highness having demised it to William Penn, Esq. (lying contigiuous to Pensilvania), at a rent. The Lord Baltemore now disturbs Wm. Penn and his agents there, and opposes ye passing of a patent of it to his roy'll highness here. And upon a hearing before the lords of ye committee of ye plantations, it being alledged in the behalf of his royal highness that this tract of land was inhabited by Christains before ye Lord Baltemore's patent w'ch

extended only to land uninhabited by Christians. It was ordered that they should be ready with proofs to that point.

It is now desired, in the behalf of his royall highness, a day may be appointed to be heard to it.

Endorsed:

Memo. Concern Pensilvania. Rec'd and read 12 Feb. 8¼.

The business put off till Aprill, when my Ld. Baltemore will be here.

B. C.
X. 22.

I certify that the foregoing is a true and authentic copy, taken from the volume above named.

JOHN McDONOGH,
Record Agent.

July 14th, 1871.

State Papers—Colonial—Vol. 43, No. 197.

INNER TEMPLE, June 30, '84.

Sr:

There is a cause depending before the lords committees for ferrein plantations between William Penn, lessee, to his r'll highness and my L'd Baltemore, touching a tract of land in the West Indies, the hearing of which was put off at the desire of my L'd Baltemore till Aprill last, at w'ch time they undertook to be ready for hearing; it is the duke is principally concerned as being his inheritance and his tenants are disturb'd, w'ch obligee me on his r'll h'ss behalf to desire that you would represent to the lo's of ye committee the prejudice he may suffer by any farther delay, and I hope you will y'rself give the speeding of this cause all the assistance you can.

I am your most humble serviant,

E. HERBERT.

Endorsed :

30th June, '84. From S'r E. Herberbert, concerning W. Pen. Read 2 May, '80.

For William Blathwayt, Esq., secretary to the lords B. C. committees for forran P. 25. Plantations.

Certified to by

JOHN McDONAGH,
Record Agent.

July 14th, 1871.

State Papers—Colonial—Maryland—Vol. 43, No. 199.

March 17th, 1685.

To answer my Lord Baltemore's letter to me of the 11th July, 1682, will be sufficient to clear myself of what he hath charged me w'th untill that day, it being a repetition of ye jornall he kept, but cannot begin my answer w'th ye begining of his letter, he having began with ye end of the story.

The lett'r I sent my lord from the head of the bay, bore date ye 25th of 7'ber, '81, occasioned by my long passage up thither, haveing spent most of the time I intended for my jorny to New York, or to have sent thither to borrow Coll. Morresses instrument, by w'ch I desired tenn days longer after I gott home, — being very ill, sent a second letter to my lord, w'ch he mentions ye receipt off; but before it came to his hand, I had one from him of ye 10th 8'ber, '81, (w'ch he cunningly would evade mentioning,) wherein he tells me he could not come up that year for fear of ye frost, but would wholely lay the not meeting that — year to me. To mine of the 17th March, 8½, I might reasonably expected an answer before ye 22nd of May, w'ch was the day I rec'd his of the 14th, ibid., in w'ch he tells me he had ended his sessions of assembly, and settling his business, in ord. to meet me ye beginning of ye next month without regard to any affaires of mine, ye w'ch at ye time was very urgent, for having engaged to pay ye Indians foi the land I had bought of them before ye middle of June, in — expectation of w'ch they deferred their hunting till it —

was almost too late for that year, and if they had gon before I had payd them wee could not have had any land that yeare to seat the people on y'r daily came there, it being our custome not to use any land unbought of y'r natives, a thing my Lord Baltemores — a stranger to, haveing taken all his by force, never purchased any of ye poor natives, nor did he ever mention his haveing an instrument, as I desired by mine, altho' he knew I had none, but that had sent to New York to borrow one, w'ch was not yett come, nor had it, had not I gon myself and ingaged for its security, on ye 26th of May, seeing a necessity for my goeing to New York as aforesaid sent an expresse to my Lord Baltemore, supposeing it might be with him before his setting out, with orders at home, that if they heard of my lord's coming, to send an express to me to New York. My lord here takes notice of the receipt of mine of ye 26th May, and yt in it I mention ye 10th June, but not ye occasion, which was to desire it might be putt off till I came from New York, but his lordshipp's way of showing his pollitick; and now, sr., I begg leave yt I might not follow his lordshipp's — immathodicall method to leave his letter of ye 11th of July a while and come to some others of his and agents, that I might ye more easily keep the path I began in — here ought to be read his letter of the 1st June, '82, by w'ch he excuses his not coming himselfe, as he had promised, but yt he had sent his com'rs, and hoped they would meet w'th persons the like quallified, this very letter was brought by ye com'rs themselves, and ye first time I ever heard he had an interest to send com'rs, and therefore no wonder they were disappoint'd of meeting any of the like qualifi'd. W'th this letter I received one from his com'rs dat— from Augustine Harman ye 10th June, '82. They were both brought me to New York by George Goforth. In this letter they desired — I would dispatch persons with instruments to joyne with them. In order to this I shipp off an instrument at New York, on board of Creger's sloop, and took my jorney by land to meet them. When the sloop arrived at New Castle, my Lord Ba's com'rs were there, and understanding the instrument I had borrowed was on board, did, by ye means of the Dutch inhabitant of that towne, procure the master, (he being a Dutch man,) to bring it on shore, and there they used it, as you may see by my lord's letter of 11th July, (a confidence I never mett the like, to dare to touch an instrument that was to be used by the contrary party, and so privately, that no friend of ours was by.) Now how honest this will appear before all sober men, as his lordshipp is pleased to say of my actions, I know

not, but in my opinion they that don't take it for knavery will be mistaken. I beg pardon for this degression. The day after they had used the instrument, I came down to Newcastle, believing the com'rs had been there, but they were gone the night before.

The next morning I sent Mr. Haig to Augustine and Harmans, in hopes to a found them there; but they were gone before he came there, but on the same day. What reason these gent'men had to goe back, when they saw the instrument and was told I was near home, I can't imagine. July 7th, '82, I sent to my lord to give him a No. 1 y't. I made all possible speed to meet his com'rs. How strangely I mist them, and how ready I was now to joyne with them now had secured pay for ye Indians. By a lett. from my lord of ye 14th August, '82, he tells me ye sometime ye next month he intended to send his com'rs of againe, and perhaps come himselfe, the w'ch accordingly he did. A particular journal of it I have writt by itselfe.

William Markham, gent., maketh oath that this is a true answer to all the allegacons (yet known) alledged by the Lord Baltemore.

WM. MARKHAM.

Endorsed:

An answer to ye Lord Baltimore. Sworn before the committee, March 17th, $168\frac{4}{5}$.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers—Colonial—Vol. 43, No. 201. March 17th, 1685.

My Lord:

Yesterday I putt my instrument on board my boat and provided otherwise to attend yo'r lordship at New Castle in order to lay out the linne betwixt the two provinces towards Chesapeak bay, but as the tyde served and my boat ready to saile, I received advice from Chechister, ati Markes Hook, of yo'r lordshipp's carriage in that

— towne, w'ch I no sooner received but reflecting on yo'r lordshipp's last at parting from Upland, I saw it — absolutely needful for me to consult with ye persons in this province most concerned for the safety of it; and, my lord, they are of opinion that your lordship hath left his province in y't disorder that it is absolutely necessary for me att this time to stay in it as well to quiet the mind of the inhabitants as also to prevent any such thing for the future. Thus, my lord, yo'r lordship has prevented my attendance, &c.

This is a true copy sent to the Lord Baltemore (the conclusion or complement excepted), to — w'ch William Markham maketh oath.

WM. MARKHAM.

Endorsed:

Mr. Markham's attestation of a letter sent to my L'd Boltemore. Sworne before the committee, March 17th, 168$\frac{4}{5}$.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers—Colonial—Vol. 43, No. 204.

March 17th, 1685.

To his Excell'y, my Lord Baltemore:

Whereas yo'r lordship hath been pleased to desire a reason of me, under my hand, why I concur not with yo'r lordship in laying out the bounds of this province, Penns'vania, upon Delaware river. My lord, this is my reason: that as I received all y'r part of the river Delaware beginning 12 miles above New Castle towne and soe upwards from the government of New York, w'ch is according to the express words of his — maj'ts lett'rs pattents to our proprietory Wm. Penn, Esq're, I most humbly conceive that I am not to be — accountable to any other person then his maj'ty or royal highness for any part of

this province — laying upon Delaware river and soe bounded, but if yo'r lordship be willing to lay out ye bounds betwext this province, and yo'r lordshipps laying towards Chesapeake bay and the river on that side, I am ready and willing to wayte upon yo'r lordship for y'r end and purpose.

I am, my lord, yo'r lordship's most humble servant,

WM. MARKHAM.

Upland, in Pennsylvania, 7 ber 25, 1682.

Wm. Markham maketh oath that the above mencioned is a true copy, delivered by me to ye Lord Baltemore.

WM. MARKHAM.

Endorsed :

Pensilvania. Mr. Markham's reason for not laying out the bounds of Pensilvania with ye Lord Baltemore, sworne before the committee March 17, $18\frac{4}{5}$. Wm. Markham's reason given Lord Baltemore why he lays not out ye bounds of the province.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers—Colonial Entry Book—Vol. 52, p. 107–114.

Order and Report upon ye — Difference between the Lord Baltemore and Mr. Penn.

At the Court at Whitehall,
13th Novemb, 1685.

The king's most excell't maj'is, in councill :

The following report from the right hon'ble the lords of the committee for trade and foreign plantations being this day read at the board.

Mem'd—The lords of the committee for trade and plantations having, pursuant to his late ma'js order in councell of the 31st of May, 1683, examined the matters in difference between the Lord Baltemore and William Penn, Esq., in behalf of his present majesty concerning a tract of land in America commonly called Delaware, their l'ps find that the land intended to be granted by the Lord Baltemore's patent, was only land uncultivated and inhabited by savages, and that this tract of land now in dispute was inhabited and planted by Christians at and before the date of Lord Baltemore's patent, as it hath been ever since to this time, and continued as a distinct colony from that of Maryland, so that their lo'pps humbly offer their opinion that for avoyding further differences the tract of land lying between the river and bay of Delaware and the Eastern sea on the one side, and the Chesapeake bay on the other, be divided into two equall parts by a line from the latitude of Cape Henlopen to the 40th degree of Northern latitude, and that one half thereof lying towards the bay of Delaware and the eastern sea be adjudged to belong to his ma'jy, and that the other half remain to the Lord Baltemore as comprised within his charter.

Council Chamber, 7th Nov'r, 1685.

His ma'jy well approving of the said report, it was thereupon ordered by his maj'ty in councell that the said land be forthwith divided accordingly, whereof the said Lord Baltemore and William Penn, together with their respective officers, and all others whom it may concern, are to take notice and give due and ready obedience — thereunto.

Report touchiny the Prosecution of the Quo — Warrantoes in the Plantations.

Memd.—My lord president is desired by the right hon'ble, the lords of the com'tee for trade and plantations, to move his maj'y that directions may be given to Mr. Attorney — Gen'll that the prosecution of severall writts of quo warranto against the proprietys of the province of Maryland, and against the colonies of Conecticut and Rhode Island, and the proprieties of East and West New Jersy, and of Delaware, in America, may be renewed, and that the — same may be prosecuted to effect.

Councill Chamber, 21st April, 1686.

Mr. Attorney to Prosecute my Lord Baltemore and other Proprietors in America.

At the court at Whitehall, the 30th of April, 1687:

Present—The king's most excellent maj'y in councill.

Whereas, on the 10th and 17th of July last past it was ordered that Mr. Attorney should proceed by quo warranto against the charter granted to the Lord Baltemore's ancestors of the propriety of Maryland, as also ag't the gov'rs and comp'ies of the colonyes of Connecticut, Rhode Island and Providence Plantation, and against the proprietors and East and West Jersey and of Delaware, and all in America, his maj'y in councill this day thought fitt to order, and it is hereby ordered, that S'r Rob't Sawyer, kn't, his maj'ies attorney generall, do forthwith put the said order in execution by causing the proprietors of the aforesaid places to be prosecuted on the said writt according to law, in order to their vacating of their several charters or grants.

Memon'd for my Lord President: That his maj'y be moved for the signification of his pleasure concerning the writts of quo warranto issued against the severall — proprietors and corporations in America.

Councill Chamber, 18th May, 1687.

Order of Councill to Mr. Attorney and Mr. — Solicitor to — Prosecute the Quo Warrantoes issued against the several Proprietors and Corporacons in America.

At the court of Hampton court, the 28th of May, 1687:

Upon reading a report from the right hon'ble, the lords of the com'tee for trade and plantations, it is this day ordered by his maj'y in councill, that Mr. Attorney and Mr. Solicitor Gen'll do forthwith proceed upon and prosecute the quo warr'tss which have been issued or ordered to be issued out against the severall proprietors and corporacons in America.

Mem'dum.—On the 20th of Feb'y, 168$\frac{8}{9}$, the Lord Baltemore, attending in pursuance of orders from their lord'ps, is told by the

com'tee that it is expected from his lor'p that he should cause King William and Queen Mary to be proclaimed in Maryland; whereupon my Lord Baltemore promiseth to obey any orders he shall receive from the board.

And on the 26th the following letter from the councill, enclosing the form of a proclamation for proclaiming the king and queen in Maryland, together with a copy of the oath appointed by act of parliament to be taken instead of the oaths of allegiance and supremacy, are delivered to his lord'p.

Letter from the Councill for Procla. the King and Queen in Maryland

After our very hearty commendations—

Whereas William and Mary, prince and princess of Orange, have, with the consent and at the desire of the lords spiritual and temporal and commons assembled at Westminster, been proclaimed king and queen of England, France and Ireland, and of the territories and dominions thereunto appertaining, we have thought fitt hereby to signify the same unto your lo'p, with directions that with the assistance of the councill and inhabitants of Maryland you proclaim their most sacred ma'ties, according to the forme here — enclosed, with the solemnities and ceremonies requesit on the like occasion, as also that your lord'p do give directions that the oathes herewith sent you be taken by all persons of whom the oathes of allegiance and supremacy, or either of them, might heretofore have been required; and that the said oathes of allegiance and supremacy be sett aside and — abrogated within your propriety.

And so wee bid your lo'p very heartily farewell. From the councill chamber at Whitehall, the 19th day of February, 168$\frac{8}{9}$.

Your lor'ps very lor. friends.

A Proclamation for the Province of Maryland.

Whereas William and Mary, prince and princess of Orange, have, with the consent and at the desire of the Lord's spiritual and tempo-

rall and commons assembled, at — Westminster, been proclaimed king and queen of England, France and Ireland, and of the dominions and territories thereunto belonging. Wee, therefore, ye proprietor and councill together with the principal officers and inhabitants of this colony and plantation of Maryland, do hereby with one full voice and consent of tongue and heart, publish -- and proclaim William and Mary prince and princess of Orange to be king and queen of England, France and — Ireland, defenders of the faith and supreme lord and lady of their maj'is province of Maryland, and of all other the territories and dominions to the crown of England, belonging, to whom, wee do acknowledge all faith and true allegiance with all hearty and humble affection, — beseeching God by whom king's reign to bless King William and Queen Mary with long and happy years to reign over us. God save King William and Queen Mary.

State Papers—Colonial Entry Book—Vol. 52, p. 117.

Report concer. Maryland vid. the Report and Order leb. Plan in Gen. Vol. 2, page 44.

The 26 of April, 1689.

Memorand.—There lord'ps taking into consideration the present state of the plantations with relation to the war with France among other things to be represented to his ma'ty agree to move his ma'ty that as Maryland, Pensilvania and Carolina are proprieties of great extent in America, — which do not hold themselves subject to his immediate — government, nor render any acc't to his ma'ty of their proceedings his ma'ty would please in this conjuncture to give such directions as may better secure their ma'ty's interest in those parts and putt them into a condition of defence against the enemy. Upon which representation his ma'ty in councill, the 2nd of April, 1689, was pleased to order their laps to propose to his ma'ty what may be fit to be done for securing their ma'tie's interest in the severall proprieties in America.

Whereupon their lop's, by their report of the 16th of May, 1689, among other — things represented to his ma'ty as — follows:

Report Concerning Maryland.

May it please Your Ma'ty:

We have further considered the present condition of Maryland, Pensilvania and Carolina, as they are — provinces of great extent and importance to the crown. But as they have been formerly granted by your ma'ts predecessors to severall persons in absolute propriety by — which title they claim a right of governm't. Wee humbly conceive their present circumstances and relacon the stand to the governm't of England to be a matter worthy the consideration of the parliament for the bringing of those proprietys and dominions under a nearer dependance on ye crown.

All wh'ch is humbly submitted.

On the 25th of May, 1689, their lops agree further to move his ma'ty as follows:

Report concerning Maryland.

Memor'd'm.—The right hon'ble, the lords of the com'tee for trade and plantations, desire my lord president humbly to propose to his ma'ty that his pleasure be signified to some of his ma'es privy councell, who are members of the house of commons, that they move the house to take into their consideration the present state and government of Maryland under the Lord Baltemore, and the relation that province stands unto the government of England, in order to bring the same under such a dependance on the crown as is necessary in the present conjuncture.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers—Colonial—Entry Book—Vol. 52, p. 146. Jan'y 7th, 1690.

Mem'd'm.—To the lords of the comm'tee for trade and plantations desire my lord president to lay before his ma'ty, that they have read

several letters presented to them by the Lord Baltemore, proprietor of Maryland, the copies of two addresses, and other papers, with a declaration in print from the inhabitants there, whereby it appears that the inhabitants having not received any orders from the Lord Baltemore, have of their own accord, proclaimed their maj's, and remaine in armes in opposition to the Lord Baltemore's government. Whereupon their lops are consulting Mr. Attorney-Generall touching the power granted by charter to the — Lord Baltemore, in order to such a settlement of that province as may be most for his majesty's service, and are of opinion that in case the same cannot be done before the departure of the ships for Virginia, a letter from his maj'te may be sent to those in the present administration of the governm't in Maryland, approving of their having — proclaimed their ma'ties, and ordering them to preserve the peace, and to take care that no spoile or violence be — committed, and that things remain in the condition they shall be in at that time, untill his ma't's further — pleasure shall be known.

Order for a Letter to the Governm'nt of Maryland.

Councill Chamber, the 7th of January, $168\frac{9}{10}$. At the court at Whitehall, the 30th of Jan'y, 1689 :

Present—The king's most excell't ma'ty in councill.

The rt. hon'ble the lords of ye committee for trade and plantations having this day presented to the board the draught of a letter from his maj'y to be sent to Maryland. His ma'ty in councill is pleased to order that one of his ma'tys principall secretaries of State do prepare a letter for his maj'tys signature, according to the said draught, to be sent to Maryland by the first opportunity.

William R.

Whereas by your declaration and by the copies of two — addresses laid before us, the one entituled an humble address of our loyall Protestant subjects, inhabitants of our — provence of Maryland. The other being the address of the representatives of our said Protestant

subjecks, the originalls whereof, as we are informed, have been intercepted by the French. We are given to understand the reasons and motives for your appearing in armies upon notice of our accession to the crown with your readiness in proclaiming us and the queen within that province. And being also assured by you that you will secure the government — thereof in such manner as you can for our service untill our royall pleasure shall be known therein. We have — thought fitt hereby to signify our royall approbation of your having proclaimed us and the queen. And we do further authorize and impower you to continue in our name — your care in the administration of the government and preservation of the peace and properties of our subjecks — according to the laws useage of that our province, — untill upon a full examination of all matters and — hearing of what shall be represented to us on the behalf of the proprietor and his right. Wee shall have taken — such finall resolution and given such directions for a lasting settlement as shall most conduce to our service and to the security and satisfaction of our subjects within that province, and in the meantime we are pleased to direct you to suffer the proprietor or his agents to collect the revenues arising there, and that such part only of the said revenue be applyed by you for the support of the — government, as hath usually been allowed and applied by the said proprietor to that purpose. And we do further strictly charge and require you to take especiall care that the several acts of trade and navigation be duly observed and put in execution within our said province. And so we bid you farewell.

Given at our court, at Whitehall, the first day of February, 1689, in the first year of our reign.

By his ma'ts comand.

SHREWSBURY.

To such, as for the time being, take care for preserving ye, ye peace and administering the laws in our province of Maryland in America.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

State Papers—Colonial Entry Book, Vol. 52, p. 173-8—Sept. 1, 1690.

To the Right Hon'ble, the Lords of the Committee for Trade and Plantations:

The petition of Charles Lord Baltimore humbly sheweth that your petitioner was ordered to attend your lordsh's on Tuesday the 7th instant, w'ch he did, and bro't with him severell persons, inhabitants and traders of the province of Maryland, who have had long knowledge of your pet'r's manner of government there; that your pet'r was then ordered by your l'hs to attend his maj'tie, in councill, upon the Thursday follo'g; w'ch, accordingly, your pet'r did with the persons aforesaid, but was told by Mr. Blathe'ayt; was again referred to your lord'h's, whose order your pet'r hath received to attend this day.

Your petitioner humbly prayes your lord'h's yf you will be pleased to grant him a hearing before your lordsh's concerning y'r present disturbances and troubles in the said province of Maryland, in order to the quiet resetting the same in ye hands of your pet'r's deputies and offices, that law and justice (by these troubles obstructed) may again have their due course to ye gen'll good of his ma'tie's subjects there, and that your lordsh's will be pleased to admitt the inhabitants and traders aforesaid to speak their knowledge in anything relating to the affairs of ye said province.

And your pet'rs shall ever pray, &c.

Humble Proposals of Charles Lord Baltimore to the R't Hon'ble, the Lords of the Committee for Trade and Plantations.

That those persons that are in commission for dep'tyrs, councill and justices of the province of Maryland shall be removed for the satisfaction of his maj'y.

That a commission shall be forthwith sent to one Mr. Henry Coursey, to be deputy governor, a person of good repute and credit, and well esteemed by all ye inhabitants of Maryland, he being of the church of England, and a very ancient liver and inhabitant there, as most of the considerable dealers and traders to that province can testify.

That such other persons y't are profest Protestants, and men of good repute, credit and estate, (as several of the traders and dealers of Maryland can also testifie,) shall be nominated and impowered to be the councill there, to whom his lords'p prayes the king's commands and directions, for the full examination of the truth of all such matters pretended by John Coode and those other persons — joyned with him to be the cause of their taking up — arms and possessing themselves of the government there.

That his lords'p does not desire (if his maj'tie forbid) ye prosecution or any way molesting the said Coode and his adherents for any act or thing done by them — against ye government, his lords'p being willing to give good security and to remain as a pledge here that his majestye's commands and orders herein shall be most faithfully and punctually obeyed.

That his lords'p is fully assured — will give all the satisfaction the inhabitants in gen'l can desire, and which his lords'p is likewise certain all the merch'ts, traders and dealers from that province will be very much satisfied with.

From ye L'd Chief Justice Holt (Bundle E. N., 9.)

My Lord :

I think it had been better if an inquisition had been taken and the forfeetures committed by ye Lord Baltimore had been therein founde before any grant be made to a new governor. Yet, since there is none, and it being in a case of necessity, I think the king may, by his commission, constitute a governor whose authority will be legall; and tho' he might be responsible to the Lord Baltimore for the people, if an agreement can be made with the Lord Baltimore, and will be convenient and easy for the governor, y't the king shall appoint an inquisition, may at any time be taken, if the forfeeture be not pardoned, of which there is some — doubt.

I am, my lord, your lordship's

Most humble and obedient servant,

JOHN HOLT.

Sergeant's Inne, June 3d, 1690.

The Attorney Gen'll Report upon the Draft of a Commission for the Govern of Maryland.

At the Council Chamber at Whitehall, the 22nd day of August, 1690:

The Rt Hon'ble the lords of the committee for trade and foreign plantacons are pleased to referr the draught of a commission to Lionel Copley, Esq'r, for the government of Maryland, hereunto annexed to Sir George Treby, kn't, their ma'ties attorney generall, who is desired to consider the same, and to report his opinion to the committee — whether the said draught may be fitt to pass the great scale accordenly.

WILLIAM BLATHWAYT.

Mem'dum.—The draught referred to the attorney gen'll was according to ye commission usually to ye gov'ts on ye other their majesties plantations.

May it please your lo'pps:

In obedience to your lo'pps order of reference I have perused the draught of the commission therein menconed, and I am of opinion as followeth: I understand the seizure of this government to be for necessity, as being the only — means of preserving the province. The nature of the — seizure is only to take the government out of the hands that neglected and endangered it into the king's hands. But the lawes and customes and the propertyes of the inhabitants are to be preserved as farr as may be. I doe not know whither or how farr the particulars in this draught are agreeable to the laws and manner of government which have been seated there, or may be prejudiciall to the interest of the inhabitants.

I did draw a commission general reciting y'd confusion that was there, and the danger of loosing the province to the enemyes, and the necessity of takeing it into their majesties hands and thereupon constituting a governor there to governe according to the laws of the place (and as the administracion ought to have been by the former — governor), and to defend the provence and take and apply the public revenue to y't purpose. And I see noe — cause to depart therefrom

or to recommend this present draft hereunto annexed, not knowing that the particulars therein conteyned are agreeable to the settled orders of governm't there or absolutely necessary for the preservation of the province.

Mem'dum.—The draught of a short commission mentioned by Mr. attorney gen'll was returned to him again by Capt. Copley.

All w'ch is humbly submitted to your lo'pps great wisdomes.

GEO. TREBRY.

Sep't 1st, 1690.

Certified to by

JOHN McDONAGH,
Record Agent.

July 15th, 1871.

GOV. TAZEWELL'S MANUSCRIPT.

The following pages are a correct copy of a manuscript said to be in the handwriting of Gov. Tazewell, relating to the question of boundary between Virginia and Maryland, and can be read to advantage in connection with the opinion of Reverdy Johnson upon the riparian rights of Virginia proprietors on the Potomac river.

C. E. SNODGRASS.

The territory claimed by the State of Maryland is held by the State of Virginia, and is included within the meridianal lines. The Easternmost of these lines passes over a stone, well known as the Fairfax stone, which was planted on the 17th day of October, 1745, at a spot "in the Alleghany mountains, where that part of the Potomac river, which is now (then) called Cohongoroota, first rises. This stone was intended to mark, and forever designate, 'the first head' spring of the river Potomac." The westernmost of these meridians passes over some spot that may hereafter be pointed out as the most western source of any branch of the Wappacomo, now known as the South branch of the said river Potomac. Both these meridianal lines terminate Northwardly at the parallel of latitude long known as Mason and Dixon's line, which is conceded to be the Southern boundary of the State of Pennsylvania. The space included between this parallel of latitude, the two meridianal lines described above, and the Wappacomo, or South branch of the river Potomac, and any of its branches that may extend farthest towards the West, is that to which the State of Maryland now asserts a title.

This space comprehends large portions of the counties of Hampshire, Hardy, Pendleton, Randolph and Preston, in Virginia. All of it is held by individuals under ancient grants issued by the govern-

ment of Virginia; and the inhabitants of this region have been represented in the general assembly of Virginia as members of this community ever since the year 1738, certainly, and how long before we know not.

In examining this claim advanced by the State of Maryland, it is not necessary to refer to the sources from which the State of Virginia derives her title to the territory in question, which she has so long held, and still holds, as her own domain. It would be easy to do this: but the claim advanced by the State of Maryland concedes, that not only this particular territory, but that every portion of what is now held by that State as her domain, was originally part and parcel of the more ancient colony of Virginia, and was carved out of this by the letters patent granted by King Charles the First to Cecilius Calvert, Baron of Baltimore, on the 20th of June, 1632.

Indeed, one of the principal foundations on which this claim is rested by the State of Maryland, is the solemn act of Virginia, contained in her former constitution, whereby she released to Maryland the territory included within the limits of this charter.

Claiming thus under Virginia, Maryland not only admits, but asserts the original right of Virginia to the particular territory in question, and so supersedes the necessity for the exhibition of any title by Virginia to maintain her rights.

Moreover, as the claim advanced by the state of Maryland is confined to the territory said by her to be comprehended within the limits of this grant made to Lord Baltimore, if the tract in question is not included within these limits it is conceded by Maryland that she has no right to it.

Therefore, so far at least as the interests of Maryland are involved, it is of no consequence whether the region now held by Virginia belongs to her of right or not; for even if it does not belong to Virginia, it does not belong to Maryland, according to her own shewing.

Then, the only question presented by the claim advanced on the part of the state of Maryland is this, is the tract of country described above included within the limits of the charter granted by King Charles the First to Lord Baltimore in 1632?

The mere presentation of such a question by the state of Maryland at this time cannot fail to attract attention to the singular position it shews her desire to assume. Relying upon the charter to Lord Baltimore, upon the recognition of that charter made by Virginia in 1776, and upon the release then given by Virginia to Maryland of all the

territory she then held as being within the limits called for by this charter; the proposition of Maryland says to Virginia, in effect, all this territory is mine under your own concession, but I now propose to you to investigate another claim I advance to a region held by you situated beyond the reputed limits which you formerly recognized as mine.

Should Virginia accept such a proposition, even if the proposed investigation might make it evident that the grant to Lord Baltimore was void *ab initio;* or that the present limits of the state of Maryland, although once acquiesced in by Virginia, were not the true boundaries called for by that grant, but that such bounds would greatly curtail the present possessions of Maryland and enlarge those of Virginia; still she would derive no benefit from any such result. Whereas, should this result be different, Virginia would suffer loss, without the prospect of acquiring in any conceivable event.

If Virginia had never advanced a claim to any portion of the territory now held by the state of Maryland; if Virginia had always admitted that the limits under which Maryland now holds this territory were the true boundaries called for by the charter granted to Lord Baltimore; the proposition made by the state of Maryland might wear the appearance of more equality. But when it is a matter of notorious history that Virginia denied the validity of the grant to Lord Baltimore the moment the existence of that grant was known to her; that she afterwards denied the truth of the assertion that the boundaries of the domain now held by the state of Maryland were those called for by this grant, even supposing it to be valid; and that her subsequent recognition of the validity of the grant, and her release of right to any of the territory then asserted by Maryland to be within its limits, were mere gratuitous acts, done by Virginia in 1776 to prevent discord and to secure the cordial co-operation of all the British colonies in the great struggle for their independence, then about to be commenced, impartial justice will not probably regard this attempt of Maryland to erect a new controversy upon the gratuitous concessions of Virginia, made to secure peace and harmony, as either liberal or even fair.

If Maryland believes that she desires no benefit from the concessions made to her by the constitution of Virginia, adopted in 1776, and is willing to rest her claim to the territory in question solely upon the charter granted to Lord Baltimore, in 1632, unsupported by these concessions, let her say so. She will find Virginia ever ready to meet

ner at any trial of the issue that would then be tendered, which issue would, of course, involve the original validity of this charter, and the question as to the true limits called for by it. Or if Maryland (being unwilling to put in question the validity of this charter, or the truth of the assertion that the limits under which she holds the territory she now possesses, are the true boundaries called for by it), chooses to fortify her title by relying upon the acts of Virginia; she ever willing to abide by her solemn acts, altho' they are merely gratuitous will meet Maryland upon the ground also, and will co-operate with her promptly, in delineating and marking the lines formerly recognized as the true limits called for by the charter referred to. But whatever Virginia may do in regard to it, she can never consider the proposition now made to her by Maryland, that Maryland shall continue to hold unquestioned all she now has under the gratuitious concessions of Virginia, and may be permitted, at the same time, to claim more of Virginia, in opposition to these concessions, as either equitable or just. Supposing it possible, however, that the state of Virginia may be disposed to accept this proposition made to her by the state of Maryland, unequal as it has been shewn to be, I will proceed to examine the only question which it is intended to present. As this presupposes the validity of the charter granted to Lord Baltimore, and that all the territory which the state of Maryland now holds is certainly included within the limits called for by that charter. I shall not touch either of these subjects at this time. But I will confine my inquiries to the single question, do the boundaries called for by this charter, include *more* territory than Maryland now holds, and so sustain the claim advanced by her to the region described above?

This question it is obvious can be determined only by a reference to the charter itself.

This instrument may be found in the beginning of the first volume of the laws of Maryland, revised and collected under the authority of its legislature, by William Kitty. The original is in very bad latin, of which the fidelity of the English translation there given, is probably open to as just criticisms as the purity of the latinity.

The subject of its first grant is, "all that part of the peninsula or chersonese lying in the parts of America, between the ocean on the East, and the bay of Chesapeake on the West, divided from the residue thereof, by a right line drawn from the West, from the promontory or headland called Watkins point, situated by the said bay beside the river of Wighco, to the great ocean on the Eastern side (in plaga

orientalis); and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lies under the fortieth degree of North latitude from the equinoctial, where New England is terminated." As the state of Maryland claims nothing in this quarter of Virginia beyond the boundary under which Maryland and as the view about to be taken of this subject, precludes any inquiry whether the boundary under which Maryland now holds is "the right" "line" here called for; it would be improper to make any other observation upon this part of the charter, than merely to say that it sets forth the reason why this grant was confined to the fortieth parallel of latitude. This parallel was the common boundary between New England and Virginia, as declared by the charter granted by King James the First, to the council of Plymouth, on the 3d of November, 1620. Therefore, beyond this parallel, the subsequent grant to Lord Baltimore could not legally be extended, as the grant itself here plainly declares.

Having thus disposed of the part of the Peninsula before-mentioned, situated on the Eastern side of Chesapeake bay, the charter next proceeds to grant another territory, West and North of that bay; and to designate the boundaries of this also. In doing so, it uses terms the true of which is this: "And all that tract of land within the underwritten boundaries, viz: passing from the said estuary called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the Pattowmack; thence inclining towards the South (*vergendo versus meridian*) unto the further bank of the said river, and following it where its Westward side (*plaga occidentalis*) looks to the South, unto a certain place called Cinquack, situated beside the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake; and thence, by the shortest line, to the aforesaid promontory or place called Watkins point."

The former part of this grant having plainly indicated the intersection of the fortieth parallel of latitude with the estuary of Delaware, as the point at which the *Eastern* boundary thereby called for was to terminate; in describing the next or *Northern* boundary, it was indispensably necessary to begin at this point of intersection. Beginning there, if the course of this new boundary had been anywhere to the North of this parallel, it must have encroached upon the previous grant to New England; and if it had been to the *South* of that parallel it would have left to Virginia a narrow and useless jib between this new boundary and the fortieth parallel. To avoid either of these

consequences, the course of the new boundary was required to be that of the parallel itself.

Therefore it is that the grant, in describing the new boundary, requires it to run from the said estuary, called Delaware bay, in a "right line *by the degree aforesaid.*" Thus making the fortieth parallel of latitude (or the common boundary between Virginia and New England) the Northern boundary of the territory intended to be granted on the Western side of Chesapeake bay, as it had been already declared to be the Northern boundary of the part of the peninsula granted on the Eastern side of that bay.

In this boundary Virginia has no interest whatever, except as to its extent. The line thus called for does not constitute a common boundary between Virginia and Maryland anywhere; it was the common boundary between Maryland and New England, and is the common boundary between Maryland and Pennsylvania.

Therefore the only subject in which Virginia has the slightest interest in regard to it is where it ought to terminate; and its termination is plainly required by the grant to be the point of intersection of the fortieth parallel of latitude with the true meridian of the first "fountain of the river Pattowmack." There can be no doubt about this.

But a question here presents itself, what ought to be considered as "the first fountain of the river Pattowmack," which is called for by this grant?

The context supplies so many other indicia by which the object denoted by these terms may be easily discovered, that it would be a subject of wonder how all of these should have been overlooked by the Maryland expositors of this instrument, if the argument upon which they seem to place their main reliance did not show the cause of this.

But when these expositors refer to the 22d section of this charter to prove that if any doubt exists as to the intent of its provisions, Maryland has the right to satisfy this doubt by bestowing upon the terms used such a construction as will give her the most land, it ceases to be a matter of surprise why the keen optics of some of these expositors have seen in the grant what is not there, and overlooked what is there.

According to the rule of construction which seems to find most favor in the eyes of such expositors, this 22d section (the like of which may be found in almost every modern royal grant of lands) holds out a bounty to *astutia* to mystify the meaning of words, in order to erect thereupon the jurisdiction of interest to decide in her own favor. From what code of ethics or of law such a notion is supposed to be

derived is not announced, but it is very certain that it finds no support ratione scripta ocl non scripta, in either common justice or common law.

According to the opinion of the old crown lawyers of England, expressed at a time when the prerogative was regarded with more favor there than prerogative is now regarded anywhere, a grant made by the king, at the suit of the grantee, was to be taken most beneficially for the crown.

This opinion had some plausibility at least to support it. For as the sovereign was presumed to know nothing of the subject granted, except what the grantee had disclosed in his petition, this grantee, and not the king, was considered as the real *proferens* or propounder; and then, this rule was the mere application to a particular case of the just maxim of universal law in regard to the construction of all instruments that *verba fortius accipiunten contra proferentem*.

For the purpose of excluding the operation of this harsh prerogative rule, a new clause was afterwards invented and introduced into the royal charters. The language of this clause affirmed that the grant was made "out of the special grace, certain knowledge, and from the mere motion of the king" himself.

So contradicting directly, by words at least, the former presumption that the king had no other knowledge of the subject granted than what the grantee had disclosed to him in his application; and thus leaving the grant open to a more liberal construction than it would have received from the crown lawyers if the prerogative rule had been permitted to apply to it in full force. But as these words excluding the rule of prerogative did not establish any other certain rule for construing royal grants, at least in terms, and as in such a state of things it was impossible to foresee what new rule of construction might be considered as legitimate by the subservient crown lawyers of that day, who were disposed to regard the kings of England as deriving their powers *jure divino*, or from some other source not better known; a clause similar to the 22d section of this charter was invented and inserted in most of the royal grants of property—a *majori cantela* merely.

The sole object of both clauses was to apply the same rule of construction to royal grants, which was applicable to all other grants. This rule is well expressed in the maxim before quoted that *verba fortius accipiuntin contra proferentem*. This rule, however, being one of some strictness and vigor, is never referred to but as a last re-

sort; and can never be relied upon until all other rules of exposition fail. Nor was it permissible even in the days when prerogative was at its meridian height, and when charters were required to be expounded most beneficially for the king, to clothe words with ambiguity in order to let in the prerogative rule of so construing them. But then, as now, all grants were required to be expounded "as the intent was at the time of the grant"; and to discover this intent the construction "must be made upon the entire deed, and not merely upon disjointed parts of it." Guided by these lights, intelligence and candor must first investigate the subject, not for the purpose of finding a doubt, but of clearing it of ambiguity, if this may be avoided; and it is only when *such* judges cannot solve the uncertainty, that they are at liberty to refer to the rigorous rule as a last resort, *ut res magis valeat quam pereat.*

Then let an intelligent inquirer examine the terms used in this grant in a spirit of candor, honestly desirous to discover their signification. If, when he has found this, he is left in doubt whether the terms used were here employed in that sense, let him then search into each and every other part of the instrument, in the same spirit, to dispel his first doubt. And if such examinations do not give him reasonable assurance of the true intent and meaning of the grant, at the time it was made; then as a last expedient, let him adopt the rule given by the 22d section of this charter, and give to the still ambiguous terms such a construction as will be most beneficial to Maryland. But let him never forget that he is but an interpreter and not the author, and that "justies in verbis nulla est ambiguitas, ibi, nulla expositio contra verba fienda est." More than this even strict law does not require, and more than this justice cannot grant.

On prosecuting such an examination, the first question which naturally presents itself is, for what purpose were these ambiguous terms—"the first fountain of the river Pattowmack"—introduced into this grant? The answer to this question is readily furnished by the instrument itself; and in a way that no reasonable being can doubt of its truth. The immediate subject of that part of the grant wherein these words occur is the description of a line intended to be established as its *Northern* boundary. This line it had called for as a "right line." The point at which this right line was to begin, it had denoted as "the estuary called Delaware bay," meaning thereby the intersection of the fortieth degree of latitude with that bay. For the reasons

before stated it had determined that the course and direction of the right line, beginning at this point, should be the course and direction of that parallel; which course and direction it had required by the words ordaining that it should run "by that degree." All that then remained to be done to complete the description of this *Northern* boundary of the grant was to establish a certain termination of the right line, the beginning and direction of which had been so given. This the grant effects, by declaring the right line shall be extended, from this beginning, in the given direction, "unto (usque ad) the true meridian of the first fountain of the river Pattowmack." It is thus made obvious that the purpose of introducing these words into this grant was to fix and determine the end of the boundary, the beginning and direction of which it had given immediately before.

That this obvious purpose is also the *sole* purpose of introducing these words into the grant, will be very apparent, when it is observed that, this purpose being attained, no other mention is ever made of the meridian or fountain referred to; nor is any reference made to it afterwards in any part of this instrument. Indeed, so soon as a certain termination of the *Northern* boundary is thus established, the next subject of the grant is its *Western* boundary. This is required to proceed "thence;" that is to say, from the point of intersection of the parallel and meridian aforesaid; and "inclining towards the South, is to extend unto the further bank of the said river" Potomac. It is plain, therefore, that the meridian referred to is not intended to designate this new *Western* boundary, but as merely furnishing the certain means by which the termination of the *Northern* boundary might be fixed and made known.

The idea that this meridian is referred to as a new, and, of course, the *Western* boundary of the grant, seems to be inconsistent with it in many respects. If this charter had intended this meridian itself to be a boundary, after establishing the termination of the *Northern* boundary, by the intersection of the parallel with this meridian, it would probably have employed the same terms, *mutatis mutandis*, which it had employed before as to the parallel, and would have said, thence "by the meridian aforesaid;" or thence "in a right line;" or by some other form of expression it would have denoted a meridianal line as the boundary designed. Instead of this, however, the grant calls for a line merely "inclining (*vergens*) towards the South;" and this mere inclination from the parallel, not to, (ad) but "*towards* (versus) the South," it declares to be for the purpose of finding in

that quarter a natural object, "the river Pattowmack." To satisfy such a call, it is indispensably necessary to proceed to this natural object, called for as being in the Southern quarter. Thither the *Western* boundary must go, whether the natural object called for be found East or West of the meridianal line referred to, or even upon that meridian itself.

In the latter case, however, the meridian would not be followed because it was the meridian, but because this meridianal line would then chance to coincide with the direct line going to the natural object called for. Nay, it is very conceivable, that after having fixed the termination of the *Northern* boundary, in proceeding from this point, to satisfy the next call of the grant for a natural object, the grantee would have been compelled either to have retraced his steps along the parallel, or to have gone on with it beyond the limit just established for such a termination. Or if any departure from the parallel was required to satisfy the demand of the grant that the new line should incline "towards the South," an inclination towards the South of one single second of this degree, or even of a smaller fractional part of it than a second, would have sufficed to answer this purpose.

A reference to the condition of things at the time this grant was made, in disclosing the probable reasons why the very terms found in it were employed, will well illustrate this last seeming paradox, and verify the truth of the several positions taken above, beyond all doubt, as is confidently believed. At that day, neither the parties to this grant, nor any other human being, knew where the source of the river Potomac was, or whether it would be found North or South of the fortieth degree of latitude. The existence of this river was known, and its general course and direction for about an hundred and forty miles from its mouth upwards was also known. So far (that is to say to its first falls) it had been ascended and explored. But beyond this, no white man had then ever been; and the whole country West of this point, either towards the North or South, was truly *terra incognita*. The probable inference from these few *data* was that this river Potomac crossed the fortieth degree of latitude. The great width of it, not only at its mouth, but at the highest point to which it had then been explored, justified a belief that it penetrated far into the country. If it did so, and the general direction of its course from its mouth to its first rapids was continued, it was certain that it must cross this parallel. But whether the river did continue its course in the same general direction, was then a matter of uncertainty; and

being uncertain in describing the intended limits of the grant, it was proper so to provide, as that it should have a certain boundary, be the course of the river what it might. But how was this to be effected?

One thing was very clear, that as the Potomac was a large river it must have many fountains, and that from each of these it would be easy to draw one certain meridian, which being a meridian must intersect the parallel of forty wheresoever any of these fountains might be situated, although no one certain meridian could be drawn from the great river itself. Hence in running out the *Northern* boundary of the grant, and establishing a certain termination for this boundary, instead of calling for the river itself, or any of its fountains, neither of which might be *on that line*, the meridian of a fountain was designated as giving, necessarily, a certain termination of this boundary, let the course of the river, or the position of any of its fountains, be what it might in reference to the parallel.

Having fixed the intersectional point of the parallel and meridian, as the certain termination of the *Northern* boundary in this then unknown region, the next *desideratum* was a certain *Western* boundary for the grant.

The terminus *ad quem* of the Northern boundary would necessarily be the *terminus a quo* of the new or Western boundary; but what should be the direction proper to be given to the line beginning at this point?

If this Western boundary should be made to run "by the meridian" to the fountain from which that meridian had been required to be drawn, and if that fountain should chance to exist Northward of the parallel of forty, as was then probable, every inch of the new line would have been within the territory of New England. But upon this territory, as has been seen, this charter was intended to avoid any encroachment. Therefore it was required that the new or Western boundary, in proceeding from its beginning on the parallel, should not run towards the North, but should incline towards "the South." If, however, the new Western boundary had been required to follow the meridian "towards the South," then it was very certain that to meet the fountain from which the meridian was directed to be drawn, should that fountain chance to exist Norward of this parallel, the meridian must pass around the whole globe. In the latter case, it would have been absurd; and in the former, plainly inconsistent with the manifest intent of the grant, to have required the direction of the meridian

to be that of the intended new or Western boundary. Therefore the charter most cautiously abstained from any such requirement.

But if the Western boundary departed from a meridianal line, the precise bearing of any object in this then unknown region, from the point on the parallel where it was intersected by this meridian, was neither then known or could be known; and if an arbitrary bearing from that point had been given to the new line by mere conjecture, to what point a line so directed might lead, or what might be the very probably absurd or inconvenient effects it might produce, was then a matter of equal uncertainty. Hence to avoid such possible and even probable consequences, the charter most wisely called for a known natural object as the termination of the new line, and by so determining both the beginning and the end of this line thereby necessarily determine its true course and direction. Thus certain limits were established for the grant in this *terra incognita*, and without encroaching upon the territory North of the fortieth parallel, the certainty of which limits could not have been established by any other means than those used.

To illustrate these several positions, let every conceivable case be referred to, and see how the grant would apply to each of them. The river Potomac either crossed the fortieth parallel, or it did not—but whichever of these categories was true, the fountains of the river, all, some, or one of them, must be found either Northward of this parallel or southward of it, or directly upon it. These embrace every condition that can be imagined. Then let it be supposed, first, that the Potomac had been found to cross the fortieth parallel, and that some particular fountain, say the first, was found situated to the *West* of the point of intersection of the parallel and the river which crosses it, what would have been the construction of the grant then? The boundary would still have commenced at "the estuary called Delaware bay."

[Four pages of the original manuscript are wanting.]

or could be that fountain called for by this grant, as the first "fountain of the river Potomac." But, granting this, (which cannot be proved,) it surely ought not be regarded as evidence of much scepticism to doubt the truth of the conclusion, which would infer the name of a river, from the fact of its having a nameless first fountain, whether this fountain may be situated most to the West or East, North or South. Whatever "the horoscope" of this grant may indicate, its

words plainly shew, that the terms first fountain of the river Potomac do not denote the most Western, but the nearest fountain of that river to the point of departure, and to the line whose termination the meridian of this fountain was intended to fix. If the view of this subject now being presented did not preclude it, this would be at once proved. But suppose this not to be so, and that some other of the many fountains which such a river as the Potomac must have, is denoted by these terms; still, as has been before shewn, this first fountain, wherever it may be found, is not referred to as a boundary, but as the spot from which a meridianal line might be drawn, to intersect the fortieth parallel, and as to mark the termination of a boundary, the beginning and direction of which was already given. Having answered this purpose, both the meridian and the fountain from which it was required to proceed were *functus officio*. No other mention is made of either; but the next boundary is directed to proceed from the point of intersection made by the meridian and the parallel, not to the said fountain, but to the further bank of the said river. So that the question is not what or where is the fountain, but what and where is the river, here plainly contra-distinguished from this fountain.

To say that this fountain is the river called for, is not only a solecism, which would confound the whole with one only of its many parts, and this the smallest, but is to assert a proposition absurd in itself and directly contradictory of other calls of this grant. It is absurd: because, by tracing the Potomac to this single fountain, and calling that fountain the river, unless there are two Potomacs, this fountain must be the only river of that name. This river would then have but one fountain. Now what rational being ever applied the relative *first* to distinguish any object of which there was but one. The term last would designate such an object equally well.

Such a construction is also plainly contradictory of the other calls of the grant it professes to expound; and this in many particulars—

1. The object called for is a fountain. When this is left, it is a mere spot, from which only a single meridian can be drawn. During your short absence, however, this spot is magnified into a river, from which millions of meridians might be drawn, if required.

2. The fountain called for being considered and necessarily so, as an object indefinitely small, a mere point, having position but no significant magnitude, it could not have sides or significant boundary; yet the river called for by this grant, is not only called for by the

name of a river, which must have sides or banks, but the grant expressly requires the boundary to proceed "unto its *further* bank." They who can split a hair between its West and Southwest sides may, perhaps, tell what is the "further" bank of such a fountain. In doing so, however, they will probably find it difficult to gain credence in the opinion that such minute space (if space it may be called), was ever made the subject of description in any royal grant of millions of acres.

3. This "further bank" of the river called for, is described in the grant itself, immediately after it is therein mentioned, as the "*Westward side*" plaga occidentalis. Nor it would not be possible to find the *Westward* side of anything while going "towards the South," along a meridianal line *from* the North, that is from the fortieth parallel of latitude. In such a direction you can expect to find a Southern side only.

4. Arrived at the further or Westward side of the river, the grant requires that this i. e. the further or Westward side, should be followed where it looks to the South, thereby plainly implying that the object described had two aspects, one to the North and the other to the South; and so shewing the impossibility that the most *Western* fountain of the river could be here intended. Besides this, however, it would be folly to expect that the *Westward* side of the Southern branch of any river or fountain (if a fountain could be said to have sides), could "look to the South." If it be a Southern branch, in its ascent it must look *Southward*, therefore in its descent it must look *Northward*. And any one who will take the trouble to examine a map of the country, will find that the Wappacomo, or South branch of the Potomac (as it is now called), instead of looking "to the South," looks to the North from its source to its mouth.

5. The grant promises, that by following this further or Westward bank of the river called for, where this bank looks to the South, it will lead you "unto a certain place called Cinquack, situated beside the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake." It would be ridiculous, therefore, to suppose, that the side or bank so referred to could be that of a mere fountain in the Alleghany mountains, and impossible that the further or Western bank of the river itself, if that river be the *Wappacomo* or South branch of the Potomac, could ever lead to Cinquack. This place is well-known, and, indeed, admitted to be on Chesapeake bay, at the Southernmost of the two points made by the confluence of the river

Potomac with that bay. The terms used in the grant indicate plainly, that you must not *recross* the river, but continue to follow the same side or bank at which you had already arrived, that is to say, the Westward side. If this is done, however, to reach Cinquack you must either recross the South branch, or to avoid doing so must cross the Potomac itself twice.

These considerations, it is believed, must demonstrate that no fountain of the *Wappacomo*, or South branch of the river Potomac, can be the fountain called for in this grant as "the *first* fountain" of that river; and that the *Wappacomo*, or South branch itself, cannot by any possibility be the river intended by the grant as that unto the further bank of which it requires the boundary to proceed in passing from the fortieth parallel of latitude. If this be so, there is an end put to this controversy. For as the claim advanced by the state of Maryland to the territory in question rests solely upon the assumptions that the most Western fountain of the South branch of the Potomac is the fountain called for in the charter as "the first fountain" of the river Pottowmack, and that this South branch is the river next required thereby, when the error of both or of either of these assumptions is proved, the claim itself must be abandoned.

But as it is at least possible that the state of Maryland, when excluded from these positions, may be disposed to assume some other fountain and some other stream, within the territory of Virginia, as the true objects called for by the charter to Lord Baltimore, with a view of preventing this, if possible, I will extend this examination further. In doing so, I shall not endeavour to shew what is the first fountain of the river Potomac, called for by this charter, or to designate the particular point on the further or Westward bank of the river so called, which must be sought for and determined as the point required by this instrument. To do this I should be compelled to shew that Virginia is entitled to a much larger portion of the territory now held by Maryland than Maryland has ever claimed of that held by Virginia; and this must not be done *now*. In the year 1776 Virginia, "when in her first love as a sister state," as it has pleased Maryland to say, voluntarily and gratuitously released to Maryland all right to any territory she then held as being within the limits of this charter. If Virginia had ever manifested any wish to avoid this release, or had ever made any boast of the motives which prompted her to give it, she might have merited such a taunt from her sister state. But although Virginia may feel the taunt of Maryland as

both undeserved and unkind, even that cannot provoke her to endeavour to avoid any of the acts, however ungraciously they may be regarded by those whom they were certainly *intended* to benefit. This release is in full force, and precludes any attempt on my part to shew that Virginia is *now* entitled to any of the possessions which Maryland *then* held. But although it would be useless now to prove where the true boundary called for by this charter must be sought for and will be found, it will not be useless to shew why and where an erroneous boundary was regarded by both parties as the true boundary. This therefore will now be attempted.

Where a named river, or any other natural object, must be sought for, and may be found, is not, as has been before stated, matter of argument and deduction, but of fact; and the truth of facts can only be established by evidence. To evidence therefore I will refer:

1. The particular region now called Virginia was discovered in 1607. The next year (1608) the justly celebrated Captain John Smith, who may properly be considered as the founder of the colony of Virginia, set out from Jamestown on an expedition to explore the then unknown Chesapeake bay.

This he did, from its mouth to very near the head of that estuary. On his return from towards the head of the Chesapeake, while descending this bay along its Western side, he "fell (in) with the river Potomack" and ascended it "so high as we could with the bote"—that is to say to its first rapids, now found a little above the city of Washington. Some time after his return from this expedition, and after exploring the country in various other directions, meeting with a very serious accident, Captain Smith was compelled to return to England. While in England he published his "General Historie of Virginia, from its first beginning, An: 1584 to this present, 1626." This work was accompanied with a map of the country. They were published together in London in 1629, and constituted the only authentic topographical description of Virginia extant in 1632 when the charter was granted to Lord Baltimore.

In the map which accompanied this history the extent of the region that had been then explored, either by the author himself or by any other white man, is distinctly marked and distinguished from the residue of the country, which is laid down merely from the relations given by the aborigines.

This map, so far as it designates the positions of places which the author had visited himself, will be found singularly accurate, even at

this day, especially when the means he possessed of attaining absolute certainty are considered. The names of the places mentioned in the charter to Lord Baltimore, and the orthography, show conclusively that this map of Smith's was the guide to which those concerned in this charter, as either grantor or grantee, must have had reference in describing the territory intended to be given and received, and when it is recollected that this was the only topographical description of Virginia then extant, it is certain that this map must have been their sole guide.

An inspection of this map will shew that the river Potomac is there represented as a single stream, receiving no tributary above the point to which it had been actually explored, until it has ascended almost to its sources.

It is there divided into two branches, by the confluence of which the river itself is formed. The more Southern of these two branches is represented to proceed from the point of confluence in a direction nearly West; and of course could have had no Westward side as required by the grant. Therefore, if either of them was considered as the river itself, it must have been the more Northern branch, which has a Westward side, that looks to the South; and if this side be regarded as the bank of the river Potomac itself, it will lead to Cinquack without re-crossing the river, according to the requirements of the charter.

This circumstance, together with the very near approach of this Northern branch to the fortieth parallel, seems to indicate that if either of (these) branches was then regarded as the river itself, it must be the Northern branch. It may be that neither of the two branches was regarded as the Potomac, but as being mere tributaries of this river formed by their confluence: but if it is insisted that the river must continue up one or the other of them, the more Northern branch alone will answer all the calls of the grant; and therefore, the name of the Potomac must be given to this *Northern* branch.

When it is recollected that the delineation in this map of the Potomac, above its first falls, was not made from any personal observation of the author of the map, or of any other white man, but from information derived from the aborigines; and that the Powhatans (the aboriginal inhabitants of this quarter) were ignorant of the country beyond the Blue Ridge, which was then held by a great nation, Massawomecks, with whom the Powhatans were always at war; it will occur to every one, as very probable at least, that the river Potomac

represented in this map, was confined to the country Eastward of the Blue Ridge.

This opinion will be confirmed by the fact that the distances given in this map from the falls of the Potomac to the point of confluence of its two branches, and from the falls to the mouth of the river at Cinquack, and to the Chesapeake bay near the mouth of the river, distinguished in the map as "Bolus river," (now the Patapsco,) shew very plainly that the confluence of the two branches was then believed to be much nearer to the falls than these were to the Chesapeake bay; and that this confluence was at a point above the falls not one-third of the distance between the falls and the mouth of the river, all of which latter distance had been then actually explored. If so, the more Northern of the two branches, which is represented as rising very near the fortieth parallel, must be the stream now called the Monocasy; and the other branch must be that descending from the Blue Ridge, now known as the Potomac itself, but which seems to have been formerly called the *Quiriough*.

It is a circumstance worthy of observation also that when the mountains were first discovered, which was not until 1653, as is shewn by the most certain evidence; and when the passage of the Quinough or Potomac through these mountains was then ascertained, no doubt was entertained, either in Virginia, Maryland, or in England, that of the two streams by whose confluence the river Quinough or Potomac was there made, the Cohongoruton or North branch, and not the Shenando or South branch, ought to be considered as the Quinough or Potomac itself. Nor is this doubted by anybody, even in Maryland, to this day. So that if the confluence of the two nameless branches, represented in Smith's map, be even transferred from the junction of the Monocasy and Quinough to that of the Cohongoruton and Shenando, at what is now called Harpers Ferry, the same result will be exhibited, viz: that the Northern and not the Southern branch of the main river, was intended as the boundary of the grant; and this according to the concession of all the parties interested at that time.

The effect of this evidence seems to be that when the grant to Lord Baltimore was made, in 1632, a nameless stream, then known to rise in the Northwestern quarter, and believed to do so very near the fortieth degree of latitude, offered itself as leading necessarily to the first fountain of the great river, then called the Patowmeck, which would be approached in passing Westward from the estuary called Delaware bay, in a right line by the degree aforesaid, and therefore as the

most convenient termination of the Northern boundary of this grant. But as the supposed near approach of this nameless stream to the fortieth parallel left it uncertain whether it rose to the North or to the South of the parallel, the meridian of the fountain and not the fountain itself, was called for as giving the termination of this boundary.

Not knowing in what precise direction from this point the river Patowmack might be found, but knowing that it would be found somewhere South of the parallel, and that its general course upwards was from the Southeastward to the Northwestward quarter, in prescribing the next or Western boundary of the grant, the direction given in it, was to *incline towards the South*, and to proceed unto the further bank of the said river. This "further bank" would necessarily be the Southwestward bank of the river, which would, of course, look upwards to the North and downwards to the South. Therefore the grant truly described it as (plaga occidentalis) not West, but Westward side; and directs this Westward side to be followed where it looks to the South. "And, to render this description certain to every intent, the grant further directs that this Westward side of the river should be followed, where it looks to the South," unto a certain place called Cinquack, which place the grant describes as it is represented in Smith's map, as situated beside the mouth of the said river where it disembogues into the aforesaid bay of Chesapeake. This description would indicate the stream now called the Monocasy as the nameless Northern stream delineated in Smith's map; and the most Eastern fountain of that stream as the first fountain called for in Lord Baltimore's grant. It would also indicate the point of confluence of the Monocasy and the other nameless Western stream, believed to be afterwards known as the Quinough, as the point on the river Patowmack nearest to the intersection of the fortieth parallel with the meridian called for by this charter. And it would indicate a straight line drawn from this point of intersection to the further or Westward bank of the Patowmack at the junction of the Quinough and Monocasy—the two tributaries by whose confluence the great Potomac was there first formed as the true Western boundary of this grant.

More than twenty years after the date of this charter to Lord Baltimore, when the country situated upon the Potomac above its first falls was explored Westwardly to the mountains, it was discovered that the stream now called the Monocasy was but a tributary of the principal river. To this last, the first discoverers, who came from the East, where the river formed by the confluence of these two streams

was always known as the Potomac, gave the latter name, although the river above the confluence of the Monocasy was then called the Quinough. If the first discoverers, instead of ascending the river towards its sources, had descended it towards its mouth, the probability is that the name of Quinough would have supplanted that of Potomac; but, as the reverse was the case, the name of the Potomac, which the river bore below the junction of its two tributaries, was continued to the principal of these above their confluence. It was many years, however, before the name of the Quinough became utterly extinct; for, as late as 1736, the river Potomac is oftentimes mentioned as the Quinough or Potomack.

The name of the Potomac being thus applied to the river, even beyond the Blue ridge, and the river still inclining, even there, towards the fortieth parallel, it was but natural to suppose that the first fountain of *this* river, then supposed to be that called for in the charter to Lord Baltimore, must be sought for by following the more *Northern* of its two tributaries. This region being then unsettled, the grant to Lord Baltimore was supposed to cover the territory West of the Monocasy, and North of the river then called the Potomac. This erroneous opinion was confirmed by the next piece of evidence to which I shall refer.

2. In 1673, King Charles the Second, by his letters patent (containing clauses precisely similar to those in the charter to Lord Baltimore, which are so much relied upon), granted unto Henry Earle, of Arlington, and Thomas Lord Culpeper, baron of Thorsway, "that entire tract, territory, region and dominion of land and water, commonly called Virginia," not content with this sweeping grant.

Tazewell Taylor to Gen'l Wise, enclosing papers prepared by Gov. Tazwell.

NORFOLK, April 18th, 1871.

MY DEAR SIR:

Mr. Loyall will hand you a manuscript of Gov. Tazewell, relative to the boundary between Virginia and Maryland, recently found by them among his papers, and which, altho' incomplete and without date or signature, but in his own handwriting, the ladies have requested me to send you for examination, hoping it may be useful to you and associates in the boundary commission.

From the fact that a letter of Mr. McDonald's was with the papers, it is probable that it was prepared at his request.

Please retain it as long as you wish and return it.

Yours, very sincerely,

TAZEWELL TAYLOR.

Hon. H. A. Wise, Richmond.

A. W. McDonald to Gov. Tazwell requesting an interview.

Norfolk, Dec'r 27th, '59.

Gov. L. W. Tazewell:

If Gov'r Tazewell's health is such that he would take interest in imparting his varied and valuable information relative to the (yet) unadjusted boundaries between Virginia and Maryland, the undersigned, (commissioner on behalf of Virginia), would deem it his duty, to seek an interview with, and avail himself of, the enlightened and matured counsels of Gov'r Tazewell upon the important questions which present themselves as the basis upon which any adjustment of the differences between the two states must rest.

If the desired interview will in no wise discomfort Gov'r Tazewell, any hour of (to-day), he will indicate, for it shall be observed with pleasure, by his respectful and ob't s'v't,

ANGUS W. McDONALD.

Gov. Floyd to Pres't Jackson.

Virginia—Executive Department,
May 14th, 1832.

Sir:

By a resolution of the general assembly of this commonwealth, I have been requested to procure from the government of Great Britain, authentic copies of sundry papers now on file in the archives of that government, which will be useful to Virginia in a controversy about to rise with the state of Maryland relative to our Northern boundary.

By the terms of the resolution, I have been authorized to appoint an officer to collect such testimony as may be useful to us in the proper adjustment of that unpleasant claim.

In conformity with the power vested in me, I have appointed Charles James Faulkner, Esq., a commissioner on the part of Virginia to perform that duty.

The object of my addressing you this letter which will be handed to you by Mr. Faulkner, is to ascertain whether the records which are wanted can be procured through the agency and facilities of the Federal government. If so, Mr. Faulkner will furnish your secretary of the department of state with all the necessary memoranda and references which will enable the American minister, at the Court of St. James, to procure them without trouble or delay.

With a hope that this request may not be considered burthensome to you, I have the honor to offer you

My respectful salutation,

JOHN FLOYD.

His Excellency ANDREW JACKSON, president, &c.

Edw. Livingston to John Floyd.

DEPARTMENT OF STATE,
WASHINGTON, 18th May, 1832.

To His Excellency, JOHN FLOYD,
Governor of Virginia:

SIR:

The president has referred to me your letter of the 14th May, 1832, with directions to point out what in my opinion would be the most advisable mode of obtaining for the state of Virginia copies of the papers relative to its Northern boundary, from the colonial office in Great Britain.

From the information given to me by Mr. Faulkner, it appears that all those papers cannot be so specifically designated as to enable the officer in whose custody they are to find and give copies of them. If they could be designated, nothing more would be necessary than to transmit from this department a descriptive list of them to our charge

d'affairs at London, with directions to ask from that government that copies should be furnished. This would, I have no doubt, be promptly complied with.

I also understand from Mr. Faulkner, that although all the papers cannot be sufficiently described, yet many of them can. Whether the production of these last might lead to such a knowledge of the others as would enable you to designate them also, you best will be enabled to determine. If this were probable, at two or more successive operations, all might be procured that the state requires.

If you do not think this probable, the better course would be to send on an agent to London, who, under the direction of Mr. Vail, might acquire from the office having the custody of the records such information as would be necessary to attain your object. Not that I believe he would himself have liberty to examine the records but that every facility would be afforded to his research by the direction of the government.

In either of these cases, I am directed by the president to say, that the necessary directions will be given to Mr. Vail by this department to aid, by his official application, the attainment of the documents required by the state of Virginia; and if we should send out a public ship about the time your agent intends to go (if you send one), that a passage will be afforded him. But it is necessary to add, that there are no funds at the disposal of the executive out of which any of the expenses attending this business can be defrayed.

I have the honor to be, with great respect,

Your most obedient servant,

EDW. LIVINGSTON.

The following paper was copied by Hon. I. D. Jones, one of the commissioners of Maryland, and exhibited in the deposition of John Cullen:

Mr. Jones' caption is as follows:

"Commission from the Levy Court of Summerset to John S. Handy, John Cullen and Henry Thomas, of Summerset co., in the state of Maryland, to lay off so much of Smiths island as lies within the body of Summerset county aforesaid into a separate and additional

Election District," before 1st August, 1835. Commission dated 8th April, 1835. Return dated 16th June, 1835:

"In pursuance of the said order we have viewed, laid out and return as follows for said election district, to-wit: Beginning on the East side of said island at a place well known by the name of 'Drum point'; thence Westerly cross to the bay to a hammock called Sassafras, lying on the bay shore; thence by and with the bay up to Kedges straits; thence by and with the sound to 'Drum point' to the beginning. And that we at the same time have elected the Methodist meeting-house as the most suitable and convenient place for holding the elections in said district.

In witness, &c., June 16th, 1835.

"JOHN S. HANDY. [Seal.]
"JOHN CULLEN. [Seal.]
"HENRY THOMAS. [Seal.]"

Liber G. H., No. 8, folio 35 and 36.

Extract from Records of Somerset Co., E. S., Va.—Liber M. A., folio 730.

Deed.—John Evans, of Accocack Co., in the colony of Virginia, from Henry Smith and Anne, his wife, of Summerset county, in the province of Maryland; renter grant of Lord Baltimore, of 2d Sep'tr, 1682, tract of land called Pitcraft, bounded, &c., as per certificate of 7th June, 1679—parcel of land taken out of the said 1,000 acres—200 acres, beginning at a marked pine at North end of Westernmost side of a ridge of land called Dogwood ridge, and running Southerly the length of 200 acres, with an East course for containing 200 acres.

Note by Gov. Wise.—Several other deeds from same records, which will probably identify divisional line on Smiths island.

Earliest Record of Summerset county, 11th day of December A. D., 1665 to 1668.

Anne Toft, *of Accomack*, recites on Manoaken, granted in the year 1665, in the year 1667, 19th day of June, granted land of his and Randall Revell's land—the double purchase or Araroza to Hannah and Cathern Revels.

This indenture, made this eighth day of August, in the fifth year of the reign of our sovereign Lord and Lady William and Mary, by the grace of God of England, Scotland, France and Ireland, King and Queen, defenders of the faith, &c.; and in the year of our Lord God one thousand, six hundred and ninety-three, between Henry Smith, of the county of Somerset, province of Maryland, of the one part, and John Tyler, of the same county and province afors'd, planter, on the other part, witnesseth: that whereas Sr William Berkely, sub-governeur and capt-gen'll of Virginia, by instructions from the king's most excellent ma'ties directed to him and the counsel of state to grant patents and to assign proportions of land to all adventurers and planters. Now, know yee that the said Sr William Berkely, sub governeur and capt-gen'rell of Virginia, &c., do, with the consent of the counsel of state accordingly give and grant unto s'd Henry Smith one thousand acres of land situate, lying and being in Accomack county, being part of an island beginning where the East and West line from Smith's island doth intersect and bound on the Northern part therewith, running Southerly to the farthest extent of the said island, bound on the Eastern and Western sides by parts of Chesapeake bay and sunken marshes, and the s'd land being due unto the s'd Henry Smith, by and for the transportation of twenty servants into this colony, whose names are on the records mentioned underneath, to have and to hold with his due share of all mines and minerals therein contained, with all rights and privileges as hawking, fishing, and fowling; with all wood, waters, and privileges; with all profits, commodities, and hereditaments to the s'd land belonging to him, the s'd Henry Smith, his heirs and assigns forever, as by the said patent dated in Anno 1667, in the nineteenth year of the reign of King Charles the 2d over England, &c. And this indenture further witnesseth, the Charles absolute lord and proprietary of the provinces of Maryland, and Avalon, lord barrow of Baltimore, &c. To all persons to whom these presents shall come greeting, in our Lord ever-

lasting, know yee that whereas Col. William Stevens, of Somerset county, in our s'd province of Maryland, had due unto him one thousand acres of land within our said province, part of a warrant for eleven hundred acres granted him the third of June, 1679, and had laid out for him a parcell of land called Pitcraft, lying in the county afor'd, all whose right, title and interest of, in and to for'sd parcel of land the s'd Wm. Stevens hath assigned and sett over unto Henry Smith, of the said county, as appears upon record, and upon same conditions and terms as are expressed in ye conditions of plantation. Wee doe hereby grant unto him, the said Henry Smith, all that tract or parcell of land called Pitscraft, situate, lying and being on the East side of Cheswpeak bay and island of broken woodland and marshes between the said bay and an endraught of water commonly called the sound, bounded as followeth: Beginning at a marked fork white oak, standing on a small hamock of woods, at the mouth of a thoroughfare called Smith's thoroughfare, on the bay side, thence for the Northern bounds, bounded by the South side of the said thoroughfare. Running first Northeast into the said thoroughfare to the North end of a narrow long island in the thoroughfare called Cow Ridge, bounded by the said thoroughfare Easterly to the mouth thereof, entering into the aforesaid sound; thence for the Eastern bounds, bounded down the side of the said sound, by the sd. sound to the divisional line drawn betwixt Maryland and Virginia; thence for the Southern bounds, bounded by the sd. divisional line, running West to the fors'd bay side; and for Western bounds, bounded by the sd. bay, running up the side of sd. bay Northerly, and bounded thereby to the first bounder, containing and laid out according to the certificate of survey thereof taken and returned into the land office at the city of St. Maries, bearing date the 7th day of June, one thousand six hundred and seventy-nine. And there remaining upon record for one thousand acres more or less. Together with all the rights, profitts, benefitts and privileges thereunto belonging, roy'l mines excepted. To have and to hold unto him, the said Henry Smith, his heirs and assigns for ever. Now this indenture witnesseth, that the above sd. Henry Smith, for and in consideration of nine thousand pounds of tobacco to him in hand, paid by the within named John Tyler before the ensealing and delivery hereof, whereof and wherewith the said Henry Smith doth acknowledge himself to be fully and wholly contented and satisfied and paid, and doth of and for every part and parcell thereof, acquitt, exonerate and discharge the said John Tyler, his heirs, ex'ers and

adm'rs, for ever. And by these presents hath given, granted, bargained, sold and enfeoffed and confirmed, and by these presents do fully and absolutely give, grant, bargain, sell, enfeoff and confirm unto the said John Tyler and to his heirs and assigns for ever, a part or parcell of land taken out of the afors'd two thousand acres of land granted as afors'd, viz: By Sr. Wm. Berkely and the Lord Baltimore, as by the several patents, now amply and fully doth appear being bounded as followeth: Beginning at the North point of the home hamock, running North, Northeast along the creek side three hundred and twenty perches for length, to a pine; and from thence one hundred perches for breadth, East-Southeast to a marked post; from thence South-Southwest three hundred and twenty perches to the main creek, and to the first bounder, containing and laid out for two hundred acres, being part thereof in Virginia and part in Maryland, taken out of the two fors'd tracts, containing two thousand acres as afors'd, with all and singular the houses, yards, gardens, orchards, meadows, marshes, fordings, pastures, ways, easements, fishing or fishing places, with all the appurtenances and emoluments thereunto belonging or in any wise appertaining. To have and to hold the same, with all and singular the premises hereby mentioned to be bargained and sold, and every one of them, unto him, the said John Tyler, and to his heirs and assigns, forever, without any mortgage, redemption, use or limitation, to recall, alter, to change or resume the same. The rents and tributes which from hence forward shall become due and payable to the lord or lords of the fee or fees always excepted and foreprized. And the said Henry Smith, for himself, his heirs, ex't'rs and adm'rs, do forever, freely and absolutely, acquit and discharge the same of and from all and all manner of former and other bargains, grants, sales, forfeitures, jointures, dowers, surrenders, and of and from all other titles, claims and demands whatsoever. And that he, the said Henry Smith, is, and standeth seized, at the time of the delivery of these presents, of the aforesaid land and premises, with the appurtenances thereunto belonging, of a firm, sure, good and indefeasable estate of inheritance, and in fee simple, and that he hath a good right, full power and lawful authority to grant, bargain and sell the same to him, the said John Tyler, and to his heirs and assigns, forever. And the said Henry Smith doth further covenant, grant and decree, to and with the said John Tyler, his heirs and assigns, that he, the said Henry Smith, his heirs, exe't'rs and adm'rs, shall, and will, at any time hereafter, for and during the space of seven years next ensuing,

and upon the reasonable request, and only at the cost and charges in the law, of him the said John Tyler, make, do, acknowledge, execute and suffer, or cause to be made, done, acknowledged and suffered, all and every such and other further reasonable act and acts, thing and things, devise and devises, whatever in law necessary to be done for the better settling and more sure making of all and singular the before hereby mentioned demised lands and premises, unto him, the said John Tyler, and to his heirs and assigns for ever. As the said John Tyler, or his heirs and assigns, or his other counsel learned in the law shall be reasonably desired, advised and required.

In confirmation and full assurance of the truth above written, the sd. Henry Smith hath hereunto sett his hand and seal, giving deed, and hath with full and peacable possession by livery of seizure of the above sd. land and premises, as witness the day and year above sd.

HEN. SMITH. [Sealed.]

Signed, sealed and delivered in sight
and presence of us.

SAM'L ALEXANDER.
J. GRAY.

In memorandum that this day (viz.) the 8th day of August, in the 5th year of their ma'ties reign, Wm. and Mary over England, &c., Anno Domini 1693. Before Thomas Newbold and Jno. King, gents., two of their ma'ties justices of the peace for the county of Somerset, in the province of Maryland, came the within named Henry Smith, in his proper person, and did acknowledge the within mentioned land containing two hundred acres, part thereof lying in Virginia and part in Maryland, to be right of him, the within named Jno. Tyler and his heirs forever, and for this acknowledgement quit claim and agreement the said Jno. hath given him, the said Henry, nine thousand pounds of tobacco.

THS. NEWBOLD,
JNO. KING.

Coram nobis.

Entered the 17th of August, 1693, p'r

JNO. WEST, Cir cr.

I, Levin L. Waters, clerk of the circuit court for Somerset county, do hereby certify that the foregoing is truly copied from liber L (folios 114 and 115), one of the record books now being and remaining in the office of the clerk of said court.

In testimony whereof, I hereto set my hand and affix the seal of said court, this seventeenth day of May, Anno Domini eighteen hundred and seventy-two.

[Seal.]

LEVIN L. WATERS, Cl'k.

[U. S. stamp.]

The foregoing is a true copy from a copy of the record.

True copy of a paper found in the possession of Alexander Tyler, on Smith's Island.

Extract from a deed to John Tyler and Henry Smith, dated 8th day of August, sixteen hundred and ninety-three:

Beginning at the West point of the Horse hammock, running North, Northeast along the creek side three hundred and seventy perches for length to a pine, and from thence one hundred perches for breadth, East, Southeast to a marked post; from thence South, Southwest three hundred and twenty perches to the main creek, to the first bounder, containing and laid out for two hundred acres, being part thereof in Virginia, and part in Maryland, taken out of the two afr'd tracts containing two thousand acres aforesaid, with all and singular the houses, yards, gardens, orchards, meadows, marshes, feeding, pastures, ways, —, fishing or fishing pawns, with all the appurtenances and emoluments thereunto belonging or in anywise appertaining.

In testimony that the foregoing is a true extract from the records now remaining in the office of the clerk of Somerset county, I have hereto set my hand and affixed the seal of my office, this 4th day of Dec'r, 1823.

GEO. HANDY, Cl'k.

N. B.—The handwriting of the paper is known to Mr. Jones to be that of Geo. Handy.

This indenture, made this 30th day of August, in the year one thousand eight hundred and twenty-eight, between Elisha Crocket and his wife of Accomack county, and state of Virginia, of the one part, and Richard Eavins and Wm. Eavins, of the same place, of the other part, witnesseth: that the said Elisha Crocket and Caty, his wife, in consideration of the sum of three hundred and seventy-five dollars, lawful money of the United States, to them in hand paid by the said Richard Eavins and Wm. Eavins, at and before the ensealing and delivery of these presents (the receipt whereof is hereby acknowledged), have bargained and sold, and by these presents do and each of them doth bargain and sell unto the said Richard Eavins, his heirs, and assigns for ever, a certain tract or parcel of land situate lying and being in the county af'd, containing seven hundred and fifty — be the same more or less. And bounded as follows, to-wit, bounded North on the Tyler ditch, on the South waters of the Tangier's island, on the West by the Chesapeake bay, on the East by the waters Tangier's sound. To have and to hold the said tract or parcel of land with the tenement, hereditaments, all and singular other the premises hereinbefore mentioned, or intended to be bargained and sold and every part and parcel thereof, with every of their rights, members and appurtenances unto the said Richard Eavins and Wm Eavins, his heirs, and assigns forever to and for the only proper use and behoof of him, the said Richard Eavins and Wm. Eavins, his heirs and assigns forever. And the said Elisha Crocket and Caty —, his wife, for themselves and their heirs, the said land with all and singular, the premises and appurtenances before mentioned unto the said Richard Eavins and Wm. Eavins, his heirs and assigns, free from the claim or claims of them, the said Elisha Crocket and Caty, his wife, or either of them, their or either of their heirs and of all and every other person or persons whatsoever shall, will and do warrant and forever defend by these presents.

In witness whereof, the said Elisha Crocket and Caty, his wife, have hereunto set their hands and seals the day and year first above written.

ELISHA CROCKET. [Seal.]

her

CATY ⋋ CROCKET. [Seal.]

mark.

Signed, sealed and delivered in the presence of interlined previous to being signed.

Accomack county, sc:

We, John F. Riley and William Riley, justices of the peace in the county aforesaid, in the state of Virginia, do hereby certify that Elisha Crockett, a party to a certain deed bearing date on the 30th day of August, 1828, and hereto annexed, personally appeared before us in our county aforesaid and acknowledged the same to be his act and deed, and desired us to certify the acknowledgment to the clerk of the County court of Accomack in order that the said deed may be recorded.

Given under our hands and seals, this 30th day of August, 1828.

JOHN F. RILEY. [Seal.]
WILLIAM RILEY. [Seal]

Accomack county, sc:

We, John F. Riley and William Riley, justices of the peace in the county aforesaid, in the state of Virginia, do hereby certify that Caty Crocket, the wife of Elisha Crocket, parties to a certain deed bearing date on the 30th day of August, 1828, and hereunto annexed, personally appeared before us in our county aforesaid, and being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said Caty Crocket, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.

Given under our hands and seals, this 30th day of August, 1828.

JOHN F. RILEY. [Seal.]
WILLIAM RILEY. [Seal.]

This deed from Elisha Crocket and Caty his wife to Richard and William Evans, with the certificates of acknowledgement thereof, was recorded by Thomas R. Joynes, clerk of Accomack County court, in his office, and admitted to record on the 12th day of August, 1829.

Teste,

THOS. R. JOYNES, Cl'k.

Copy of a Deed from Jacob Sparrow to Teakle Evans, found on Smith's Island, in the Possession of ———.

This deed, made this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and forty-one, between Jacob Sparrow, of the county of Gloucester, in the state of Virginia, of the one part, and Teacke Evans, of the county of Accomack, in the state aforesaid, of the other part, witnesseth: That the said Jacob Sparrow, for and in consideration of the sum of two hundred and twenty-five dollars, of good and lawful money of the commonwealth of Virginia, to him in hand paid by the said Teacke Evans before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth bargain, grant and sell unto the said Teacke Evans, his heirs and assigns forever, a certain tract or parcel of marsh land lying, situate and being on Smiths island, in the county and state aforesaid, and containing by estimation two hundred acres, be the same more or less, and bounded as follows, to-wit: On the North by the lands of Richard Evans, and on the South by a line commencing at the head of Clay cove, about two hundred yards above Josiah Sparrow's house, and running an Easterly course to the head of Peach Orchard cove, the said line having been run by the parties to this deed as the dividing line between the lands hereby conveyed to the aforesaid Teacke Evans and the tract retained by the said Jacob Sparrow. To have and to hold the aforesaid tract or parcel of land, with all and singular the appurtenances thereunto belonging or in anywise appertaining, unto him, the said Teackle Evans, and his heirs and assigns forever, and to and for the only proper use and behoof of him, the said Teackle Evans, and his heirs and assigns forever. And the said Jacob Sparrow, for himself and his heirs, doth hereby covenant and agree to and with the said Teackle Evans, that he will forever warrant and defend the title to the aforesaid tract or parcel of land free and clear from the claim or claims of all and every person or persons now or hereafter laying claim to the same, or any part thereof.

In testimony whereof, the said Jacob Sparrow hath hereunto set his hand and affixed his seal, the day and year as first above written.

JACOB SPARROW. [Seal.]

Signed, sealed and delivered in the presence of—the words "of the other part" first inserted.

Accomack county—sc. :

We, Nathaniel Topping and John C. Wise, justices of the peace in the county aforesaid, in the state of Virginia, do hereby certify that Jacob Sparrow, a party to a certain deed bearing date of the twenty-fourth day of September, 1841, and hereunto annexed, personally appeared before us in our county aforesaid, and acknowledged the same to be his act and deed, and desired us to certify the said acknowledgment to the clerk of the county court of Accomack, in order that the said deed may be recorded.

Given under our hands and seals this 24th day of September, 1841.

NATH'L TOPPING. [Seal.]
JOHN C. WISE. [Seal.]

Accomack county court clerk's office, Jan'y 28th, 1842 :

This deed from Jacob Sparrow to Teackle Evans, with the certificate of acknowledgment thereof thereto annexed, was recorded by me in the clerk's office this day and admitted to record.

Teste :

J. J. AILWORTH,
For THOS. R. JOYNES, Cl'k.

PAGE.	NAME OF PATENTEE.	DATE OF PAT.	No. of Acres.	LOCALITY.
		Book 5.		
73	Col. E. Scarbrough, - -	June 22, 1664,	3,000	N. of Chincoteague creek.
73	" " - -	Sept. 10, 1664,	2,000	S. by Crooked creek, near Pocomoke.
81	John Wallop, - -	June 10, 1664,	400	At Pocomoke.
☞	Rob't Pitt, - -	Octo. 2, 1663,	3,000	N. by Pocomoke, and W. by the C. bay.
☞126	Rob't Pitt, - -	Mar'h 12, 1662,	1,000	At Pocomoke.
421	Col. W. Walters, - -	June 12, 1664,	1,350	S. side Chincoteague creek.
602	Robert Holstons, - -	Ap'l 5th, 1666,	500	By Poco. N. W. and by Holston's creek.
☞604	John Williams, - -	" " "	500	Next S. W. by river, Holston's N. W. by Pocomoke.
604	Thomas Davis, - -	" " "	400	On Pocomoke.
605	James Henderson, - -	" " "	400	Next Thos. Davis on Pocomoke.
610	John Davis, - -	" " "	700	North by Pocomoke, W. by Davis branch.
☞614	Henry Smith, - -	" " "	1,700	On Pocomoke.
		Book 6.		
☞ 20	Radcliffe, - - -	Nov. 9, 1666,	1,200	Pocomoke on Crooked creek.
☞ 32	Dan'l Selby, - -	" " "	600	Mattapony.
☞ 32	Henry Bishop, - -	" " "	2,300	Bockatewock creek and bay on sea side.
☞ 33	Edw'd and John Smith, -	" " "	500	Mattapony.
☞ 34	John Pike, - -	" " "	400	N. of D. Selby at Mattapony.
☞ 81	Henry Smith, - -	Octo. 9, 1667,	1,000	Smiths island in the bay.
265	Anne Toft, - -	Octo. 30, 1669,	2,000	Gargaphia creek.
267	Dan'l Focraft, - -	Octo. 30, 1669,	600	S. side Pocomoke.
☞				

316	Lt. Col. John Wallop, - -	April 20, 1670,	3,050	S. side Chincoteague creek.
388	Dan'l Jenifer and - -	Feb'y 12, 1672,	11,300	Seaboard Stokely's branch.
	Anne Toft, his wife, - -	" " "	5,000	Neck between Chincoteague and Swanseagute creek on divisional line.
405	D. Browne, - -	Octo. 16, 1672,	3,700	Jolls neck, Pocomoke.
458	John Taylor, - -	" 16, 1673,	34	Little Watts island.
514	J. Wallop, alias Wardlow, -	April 9, 1674,	450	Great Mattapony als. Swanseacute on the divisional line.
514	Sam'l Taylor, - -	April 9, 1674,	700	Chincoteague creek.
542	Maj. Ed. Bowman, - -	Octo. 5, 1674,	2,264	N. side of Swanseacute or Great Mattapony and divisional line.
545	Capt. S. Littleton, - -	Sept. 9, 1674,	400	At Pocomoke, formerly ——.
607	Edw. Robins, - -	Mar. 27, 1675-6,	680	At Chincoteague on the —, beginning at divisional line between Va. and Md.
615	This grant shows Kekotank is the alias of Occocomson, now Wallops.			
637	Thomas Wellbourne, - -	April 4, 1678,	83	Fox island, North of Watts island.
637	Col. S. Littleton, - -	" 4, 1678,	1,000	At Chincoteage.
639	Chas. Scarbrough and John West, - -	April 4, 1678,	400	Western islands of Chesapeake bay.
636	John Washburn, - -	April 30, 1679,	600	Pocomoke, M. Seston's land.
677	Col. S. Littleton, - -	" " "	150	On the Forehead neck, N. of King's creek at Pocomoke; divisional line.

BOOK 7.

14	John West, - -	Nov. 25, 1679,	2,500	Pocomoke, N. Wessengo, Georges island.
26	Maj. Gen'l John Custis, -	April 20, 1680,	100	Cobham's island in Pocomoke.
66	John Tankard, - -	Octo. 2, 1680,	2,000	Between Pocomoke and Chincoteague.
157	Wm. Taylor, - -	April 20, 1682,	200	S. E. side of the Narrows.
185	Col. John Custis, - -	Sept. 22, 1682,	4,600	Jolles neck, Eastern part of 2,000 acres pat. by E. Scarbrough.
269	Col. D. Jenifer and Wm. Stevens, - -	April 16, 1683,	200	S. end of Assateague island on the divisional line.
493	Adam Mckeele, - -	April 20, 1686,	600	At Pocomoke.
500	Capt. W. Custis, - -	" 17, "	800	On Feaks or Fox island.

PAGE.	NAME OF PATENTEE.	DATE OF PAT.	No. of Acres.	LOCALITY.
563	Dan'l Jenifer, - -	April 20, 1687,	3,500	Assateague, on the divisional line.
		Book 8.		
162	John Morris, - -	April 28, 1691,	300	Betw. Chingo. and Assateague.
235	Wm. Kendall, - -	" 29, 1692,	2,725	N. E. end of Chincoteague, including Piney island.
236	John Wollop (Wardlow), -	" " "	2,500	Kekotank island.
243	John Robbins, - -	" " "	2,065	S. W. end of Chincoteague, sand island of marsh.
418	Capt. Jehn Custis, - -	" 21, 1695,	250	Northern end of Chincoteague island.
		Book 9.		
230	John Carter, - -	Octo. 26, 1699,	130	Fox North island.
244	Hill Drummond, - -	April 24, 1700,	183	Popes island, on divisional line.
285	Wm. Buttingham, - -	Nov. 7, 1700,	96	Beginning at Pitts alias Kings creek, on divisional line.
400	Nath'l Littleton, - -	Octo. 24, 1701,	150	On Forehead neck, N. of King's creek at Pocomoke.
465	McKenney and Jinkens, - -	April 25, 1702,	150	S. end of Watts island.
	Same, - -	" " "	24	Gabriels, alias Watts little, alias Goat island.
545	Frances McKennie, Arcadia Welbourne, Dan'l of St. Thos. Jenifer, and John West,	Octo. 23, 1703,	3,804	On Six island, beginning near Nanticoke sound.
		Book 10.		
72	Eliza Scarbrough and Arthur West,	May 2, 1713,	900	All Tangier island.
327	Thos. Gascoine, - -	July 15, 1715,	1,093	Head of Chincoteage creek.
		Book 13.		
111	John Marshall, - -	June 16, 1727,	170	B. S. and E. to a marked oak, being one of the division trees between Va. and Maryland.

PAGE.	NAME OF PATENTEE.	DATE OF PAT.	No. of Acres.	LOCALITY.
		Book 11.		
85	Sacker Nelson, - -	May 4, 1787,	476	Northerly and Easterly on Pocomoke sound, Southerly on Thoroughfare, Westerly on Tangier sound.
144	Richard Evans, - -	Octo. 31, 1791,	47	Part called Queens ridge, B. S. at a point of marsh near Tangier sound.
656 657	W. J. Aydelotte, Benj. Blaydes et als., - -	30 July, 1841,	880	On Assateague island.

PAGE.	NAME OF PATENTEE.	DATE OF PAT.	No. of Acres.	LOCALITY.
		Book 6.		
397	☞Miles Gray, - -	Mar. 26, 1672,	400	Branch of G't Mattapony, alias Swansecut
400	Dan'l Jenifer, - -	Feb'y 12, 167½,	5,000	Part called Chincoteague, granted to E. Scarbrough in 1664. Residue lying on the N. W. side of the 3,000 acres.
				☞Note.—St. Georges island is in Pocomoke river. See page 402; grant to John Parker, Mar. 29. 1672. Two hammocks on the marsh between Pocomoke and Messongo—the two marsh hammocks to the Western end of St. Georges island.
421	☞Wm. Whittington, - -	Octo. 2, 1672,	5,800	All Chingoteague island.
423	Capt. John West, - -	" 3, 1672,	1,000	At Chingoteague, S. by Capt. Richard Hill, and N. E. by Captain Daniel Jenifer.
430	☞John Wallop, - -	" 9, 1672,	1,550	Prones Kekotank, alias Accompson island, next Southern island to Chingoteague, Kekotank, now Wallops island.
433	Thos. Nickerson, - -	" " "	400	At Chingoteague, adjoining John Wallop.
435	John Robbins, - -	Octo. 7, 1672,	500	At the seaside, S. W. by the land of Southey Littleton, Northward by the divisional line between Va. and Md.
483	☞Captain D. Jenifer and Anne his wife, formerly Anne Toft, - -	–	2,350	On Guilford, then called Muddy creek.
		Book 7.		
66	Capt. D. Jenifer, - -	Octo. 2, 1680,	2,500	Between Crooked creek and the Pocomoke, on the N. Masengo.
168	☞Maj. John Robbins, - -	April 28, 1691,	1,500	Island called Jingoteague, parted by sunken marsh and creeks from the main neck of Chingoteague.

Memoranda of Coloniale and Commonw'th Grants.

Date.

1662.

Mar. 12, ☞ Bockatenock and Sebly's bay are high up the seaside coast on Sinarepuxent bay (on the Potomack.)

1663.

Oct. 2. Robert Pitt—book 5—4000 acres.

1664.

June and Sept., Col. E. Scarbrough and John Wallop, 2,400.

1670, Oct. 6—William Buttingham, East of Pocomoke, 450.

1678, Ap'l 4—Thos. Welbourne, Fox island, N. of Watts island.

1679, Ap'l 30—Col. S. Littleton, on the Forehead neck, N. side of Kings creek, at Pocomoke river.

1680, Ap'l 20—Maj. Gen'l John Custis, Cobham's island, in Pocomoke river.

1680, Octo. 2—John Tankard, 2,000 acres between Gingoteag, Accocomson and Pocomoke.

1699, Octo. 26—John Carter, Foxes North island.

1700, Nov. 27—William Britingham, 996, beginning at Kings, alias Pitts creek, ☞ *on the divisional line between Virginia and Maryland.*

1703, Oct. 23—Francis Mackennie, Arcadia Welbourne, Dan'l of St. Thom's Jenifer and John West, 3,804 on Six island. ☞ *B. S. H., near Nanticoke sound.*

1727, June 16—John Marshall. To a marked oak, being one of the ☞ *division trees between Va. and Md.*

1787, May 4—Sacker Nelson, Northerly and Easterly on Pocomoke sound, sou, the thoroughfare W. on the Tangier sound.

1791, Octo. 31—Richard Evans, on Queens ridge, beginning at a marsh near Tangier sound.

Where is Old Barn island, Piney island, Rich hammock?

1672, Octo. 7—John Robins, bounded Northward ☞ *by the divisional line between Va. and Md.*

1680, Octo. 2—Capt. Dan'l Jenifer 2,500 acres between Crooked creek and Pocomoke river on the North, Messongo creek—Gingoteague alias Jingoteage alias Chincoteague.

1664, April—Col. E. Scarbrough, 4,150
June—Col. Wm. Waters, 1,350
August—John Wallop alias Wardlow, 3,050
——8,550 acres.

1682, May 8—1686 Nov. 3—Lt. Col. Dan'l Jenifer 3,890 on Assateague, William Kendall 2,725 acres N. E. end of Chincoteague, including a piney hammock called Piney island.

1694, Ap'l 20—Maj. John Robbins 2,725 S. W. end of Chincoteague, including a little island of marsh.

1695, Ap'l 21—Capt. John Custis, N. end Chincoteague.

1700, Ap'l 24—Hill Drummond 183 acres on Pope's island.

1672, Ap'l 24—William Whittington 5,800 acres, all Chincoteague island.

1691, Ap'l 28—Major John Robins 1,500 acres, being an island called Chincoteague island, and parted from the Main neck of Chincoteague, Great Mattapony, or Swanseacute, and Chincoteague creek and neck on the main.

1666, Nov. 9—Dan'l Selby 600 acres, and one to Bishop, on Bockatenock creek, on Selbys bay.

1666, Nov. 9—Edward Smith 700, and John Peck 400, both N. of Daniel Selby's.

167½, Feb'y 12—Daniel Jenifer and Anne (Toft), his wife, 16,300, bounded East by Stokely's branch, and shows where Chincoteague creek on the main was.

1674, Ap'l 9—John Wallop 450 on the Swanseacute or Mattapony.

1674, Ap'l 9—Sam'l Taylor, 700 on Freshwater branch on Great Mattapony, by some called Swanseacute.

1675, Ap'l—Col. S. Littleton 1,000.

1672, Mar. 26—Miles Gray 400 acres bounded Northward on a Southern Freshwater branch of Great Mattapony called Swanseacutes.

167½, Feb'y 12—Daniel Jenifer 5,000 acres called Chingoteague, 3,000 of it granted to Col. E. Scarbrough 20th June, 1664, and 2,000 acres of same lying N. W. of the 3,000 above.

1672, Oct. 3—Capt. John West 1,000 acres on Chincoteague creek.

1672, Oct. 9—John Wallop 650 acres on Gingoteague alias Chingoteague.

1672, Oct. 7—Thos. Nickion at Chincoteague creek, adjoining John Wallop.

1672, Oct. 7—See back John Robbins, bounded Northward by the divisional line between Virginia and Maryland.

1673, May 27—Thos. Mosier 1100 acres in the upper part of the county, in the woods near Gingotake.

Letters and portions of letters without date, address, or signature, in the handwriting of Gov. Tazewell, relating to the boundary question.

C. E. SNODGRASS.

[This, to the mark on third page, appears to be a fragment of a letter from Gov. Tazwell to the Governor of Virginia, touching his authority to negotiate upon the boundary question.]

In acknowledging the receipt of your excellency's letter of the 15th inst., justice to myself requires that I should promptly correct a misapprehension which you seem to entertain, as to the doubt expressed in my last, in reference to the extent of your authority to enter into any new negotiation upon the subject of the boundaries of our two states. In expressing this doubt, I certainly had no idea of questioning your authority for giving the invitation to do so as you suppose. But merely to call your attention to the fact, that even if this invitation should be accepted by those who alone had power to accept it, the purposed negotiation might be prevented, or its consummation procrastinated, by a defect which I thought it possible might have escaped the notice of your excellency. You have assured me that I was wrong in this supposition, however, and it is not for me to pronounce, at this time, upon the sufficiency of your arguments to shew that your own construction of your own powers ought to be regarded as correct. Having said this, perhaps there is no necessity for adding more, especially as your excellency has informed me, "that unless provision" has been made in our act of March 5th, 1833, for the very special and possibly unnecessary umpirage prescribed by your resolutions of 1831, in case of the disagreement of the commission, you have no authority to continue negotiation upon the subject further. The act referred to contains no such provisions certainly; it will be long, I hope, before the State of Virginia will ever consent to submit an undefined proposition concerning her territory to any arbiter nomi-

nated to her, and with this declaration of your excellency, it would be useless to say more upon this subject, than to repeat the assurance I have formerly given you, that I will lay before the next general assembly of Virginia the whole correspondence between us, and submit to them the propriety of acceding to this peremptory sene qua non.

In conclusion, I will take the liberty of saying to your excellency, that when I availed myself of the occasion presented by your first letter, while announcing to you my own want of authority to conclude anything in regard to its subject that might be obligatory upon Virginia to propose a frank, informal correspondence between us in reference to that matter, I was actuated by no other wish than an ardent desire to become the instrument of facilitating the termination of a controversy which, I believe, then would not be continued if its precise object was once correctly understood. To effect this, obvious considerations seemed to me to suggest the avoidance of any reference to past proceedings that had been employed in characterizing the conduct of one of the high parties to the controversy, especially as the State of Maryland seemed to concur in this opinion by repealing the resolutions con——

Your excellency thinks differently however, and while tendering me the late resolutions of your legislature repealing those adopted in 1833, you refer specially to the proceedings which accompanied these resolutions to shew that the opinion of that body which adopted these proceeding concurred with yours in this particular. I will forbear any other remark upon this than to say that I regret it.

[From this point to the end of the 4th page is in reference to bounty lands, and has nothing to do with the boundary question.]

I have the satisfaction to inform you that before the 1st day of September now last past, all the claims for military bounty land which had been exhibited to the executive were disposed of finally by that body. I have been since informed officially, through the secretary of the U. S., that the warrants filed exceed the appropriation of 650,000 acres made by Congress in the act of March 3d, 1835, by 94,599 acres.

This excess, as the register informs me, does not comprehend other allowances made by the executive of this commonwealth, upon which no warrants have yet been granted by the register, because none shewn to be properly authorized to receive such warrants have applied to him for the same. Since the 1st day of September last, a few additional claims for military bounty land have been presented; upon none of

these, however, have we yet proceeded to act; nor, under the circumstances stated, shall I feel myself at liberty to act hereafter unless directed to do so by some resolution of yours.

Your attention is therefore again invited to this subject. There is no reason to doubt that most of the officers of the government of the U. S. view this subject in the same light in which I have here presented it; but being mere executive officers, bound to carry existing laws into execution, each at his own peril, legislative enactments are requisite to protect these officers, and to cause the laws of the land to conform more exactly to the objects of the constitution than they now do probably.

Your letter of the 31st ult'o, the receipt of which I have now the honor to acknowledge, contains some remarks to which I am reluctantly constrained to reply, notwithstanding your declaration that there is no necessity for any further correspondence between us on the subject to which it relates.

You say that I have declined making any exposition of the Virginia act of March 5th, 1833. I am not aware that any such exposition has been sought by your excellency in any of the various communications with which I have been favored by you; nor that any doubt has ever been entertained by you as to the intent and meaning of that act. It is true, that in your letter of the 15th ult'o, you informed me that unless it had made provision for the umpirage proposed in case of disagreement of the commissioners, you had no authority to continue negotiation upon the subject, or to appoint to meet those appointed by Virginia. But even if this information was intended to intimate any doubt on your part as to the character of the act in this respect, this doubt must have been removed by the prompt exposition I then gave you, in stating that the act contained no such provision certainly. A most careful re-examination of all our correspondence does not now furnish me with an intimation of any other date stated by your excellency. Nay, so far from containing the expression of any wish, for any explanation on my part, your letter gave me distinctly to understand that you did not consider me as empowered to make any authorized explanation on the subject.

Your excellency corrects an error into which you suppose I have fallen, in considering your submission of the proposals contained in the resolutions adopted by your State at the December session, 1831, as a peremptory *sine qua non;* and you inform me that your sole

object in referring to these proposals was but to shew the extent of your powers. Now so far as Virginia is concerned in the matter, it is of little consequence, for what reason this preliminary to negotiation was dictated to her. In any the acceptance of terms presented constituted a condition precedent to any negotiation. If Virginia had ever expressed an earnest desire to Maryland to close and finally adjust a question pending between them by amicable negotiation, Virginia certainly would have no cause to complain of Maryland for annexing to her acceptance of such a proposition, any condition she might think proper. But when it is not Virginia, but Maryland, that gives this invitation, the annexation of any condition as preliminary to that which she has invited, is a novelty at least, whether this condition be prescribed by Maryland directly, or results from the nature of the powers with which she has clothed her agent.

The peculiar character of the condition thus sought to be prescribed we also claim some notice. Virginia has in vain called upon Maryland to state to her precisely what it is she claims, and upon what foundation her claim rests; (*except in the most general terms.) Without answering these questions, Maryland says to Virginia, I propose to submit this yet unknown question, involving unknown interests, to the umpirage of an unknown arbiter, who is to be governed by no prescribed rules, and may be guided by any unknown evidence and unknown argument hereafter to be offered.

[This appears to be a letter from Governor Tazewell to the Governor of Maryland, most probably. It is without date or signature.]

Your excellency supposes such a proposition to be countenanced by precedents to be found in the Diplomatic History of the United States. If this history, or that of any other State, either ancient or modern, furnishes any example like it, I am uninformed certainly where it may be found.

You describe the proposition also as equal and reciprocal. But when the situation of the two high parties is considered, it would be difficult to shew in what the reciprocity consists; and as to its equality, so would be a reference to mere chance. It is not usual, however, for states either to propose or to accept such an umpire. Something more than equality and reciprocity (if that could be found here), is generally considered desirable in the establishment of any forum. And Virginia would pay but little regard to her own character for either

*It is uncertain at what place these words were intended to be inserted.

integrity or intelligence, if she was prepared to submit any and every claim that might be preferred against her to an unknown umpirage, presented to her by the claimant before the precise nature of the claim has been announced, or its character defined.

Your excellency expresses, and I doubt not feels a desire to see this controversy terminated, by any fair, reciprocal and feasible plan which Virginia may propose. But it will at once occur to you that Virginia is precluded from claiming anything of Maryland, and until Virginia is informed of the precise nature of the claim advanced against her, and of the proofs and arguments to sustain it, she can form no just idea of the nature of the demand, and is so incapacitated from suggesting any plan for its adjustment.

[Though written on detached scraps of paper, pages 9 and 10 are evidently a continuation of the foregoing letter.]

If Maryland is content to rest her claim to the territory in question upon the recognition of her right made by Virginia in 1776, Virginia is willing to abide by that recognition still. But she never can consent that Maryland may retain what she possesses in virtue of this recognition, and then ask for more under a title adverse to it, and in opposition to its admitted signification. It is with Maryland to select the ground upon which she chooses to rest her claim, and Virginia—will controvert. But she cannot in reason trace its foundation to two contradictory sources, claiming so much under the concession of Virginia and so much more against that recognition. One or the other of these sources of her title Maryland must abandon, if they be in conflict with each other; and that they are in conflict will be obvious to all when it is seen that the terms used in the concession made by Virginia in 1776 refer expressly to the territory then possessed by Maryland which had been theretofore claimed by Virginia, and not to territory then held by Virginia and occupied and claimed by Virginia as her own, while the grant made to Lord Baltimore in 1633 could not by any possibility have referred to his antecedent possessions or to the claims of Virginia afterwards covered by that grant itself.

If the grant to Lord Baltimore covers the territory possessed by Maryland in 1776 and more, the recognition then made by Virginia is of no avail to Maryland, but the better foundation of her claim would be this grant.

If the concession made by Virginia in 1776 comprehends more than the grant to Lord Baltimore ever covered, then the better title of Maryland would be derived from this recognition; and if both the grant

and recognition cover the same region throughout, it is now of no consequence to either Maryland or Virginia to which of these sources the title of the former is traced, as in either case the result will be the same. It would now save much discussion which may very probably prove to be unnecessary, if Maryland would make her election under which source of title she thought proper to rely But as this is not done, both grounds must be examined.

So I will begin with the grant to Lord Baltimore as the elder, if not the better title.

The claim asserted by the state of Maryland to the territory in question she derives from a grant made by King Charles the First, to Cecilius Calvert, Lord Baltimore. This grant bears date June 20th, in the 8th year of that prince's reign, 1633. Within the boundaries called for by it, the territory in question is said by Maryland to be included. It is conceded on all sides that whatever may be the true limits required by this grant, the whole comprehended by them is but a small part and parcel of a much larger region, previously granted by King James the First, on the 23d of May, 1609, to a company incorporated under the name of the treasurer and company of adventurers and planters of the city of London, for the first colony of Virginia. Therefore, unless the limits of the grant to Lord Baltimore includes the territory in question (now claimed by the state of Maryland, she must admit that territory to belong to Virginia, as being comprehended confessedly within the bounds of this her more ancient charter. In this view of the subject two questions would naturally present themselves. Did the grant then made to Lord Baltimore really include the territory in question? Did the king of Great Britian enjoy the legitimate power to carve any portion of the territory granted to Lord Baltimore in 1633, out of the greater territory which had been previously granted to the colony of Virginia in 1609, by a former sovereign of that empire, and if such power existed? If the first of these questions was now open for discussion, it might be affirmed confidently, perhaps, that no king of England, or of Great Britian since the enaction of magna charta, had possessed in virtue of his mere prerogative, the legitimate authority to grant to one, any freehold or franchise which the crown had previously granted to another.

Such an assertion would apply with great force to a case like this, where a body of adventurers had been tempted by the promise of the rights and privileges given to them by the provisions of a liberal charter, to embark in the hazardous undertaking of founding a colony in

a new world, when, by the establishment of which colony, they were assured by this charter, that they, and their descendants, should then have and enjoy all the liberties, franchises and immunities of British subjects abiding and born within the limits of England. In that case also it might be contended with equal truth, that the grant made to Lord Baltimore in 1633, was confined to a portion of America, then uncultivated, and occupied by savages, having no knowledge of the divine being, in partitus America et barbaris nullane divini) such a grant could not possibly have been designed to comprehend all the territory included within its bounds at the date of this grant. A portion of this territory had been that already settled, because it was then occupied by British subjects who derived their title to the same, from the then existing government of the colony of Virginia, within whose acknowledged limits it then was.

Our ancient records shew that so early as February 163½ the isle of Kent, now called Kent island in the state of Maryland, was not only settled and occupied by the colonists of Virginia, but that the inhabitants of that plantation then enjoyed and exercised the privilege of sending a burgess to the grand assembly of Virginia; and our statute book contains several acts of this assembly passed both before and after the date of the grant to Lord Baltimore, whereby the trade of the isle of Kent was regulated. But these questions it is readily admitted are not now open to discussion. They were settled very many years since by the king himself, upon grounds approved by his council, the judges; and although, to the colony of Virginia, the determination of the sovereign was then unsatisfactory, and became the subject of great murmuring and complaint; yet Virginia had no means in her power which might have been employed consistently with her loyalty to oppose the decision. She therefore reluctantly yielded at first to the force of this authority, by which the determination was made, but afterwards, in 1776, the very act by which she assumed sovereignty and independence, she voluntarily ceded, released and forever confirmed to the people of Maryland, all the rights of property, jurisdiction and government, and all other rights whatsoever, which had been claimed by Virginia in the territory contained within this charter, granted to Lord Baltimore, whereby Maryland was erected into a British colony. The commonwealth of Virginia feels no wish to impair the obligation of this concession, then voluntarily, tho' gratuitously, made by her, so far as she is concerned.

Virginia is still willing that the state of Maryland should retain

everything which is therein granted or renounced. But, while thus ready to relinquish again, if necessary, the right, which she might properly assert, to any portion of the territory ever occupied, held or until lately claimed by Maryland, under the grant to Lord Baltimore, Virginia cannot regard it as either generous or just that the state of Maryland, to secure a title to what it possesses, should rely upon the voluntary and gratuitous concessions made by Virginia in 1776, and then, to enlarge these possessions, should assert a title unconnected with this concession, and certainly, to its meaning, as well understood by both parties at the time the concession was made.

[Apparently a portion of the charter to Lord Baltimore.]

Totam illam partem peninsulœ sive chersonise janieutes en partibus America inter oceanum ex oriente et serium de Chesapeake ab occedente a residuo ejusdem per rectam lineam a promontorio seve capite tena oceanio Watkins point juxta sinum predritum prope fluvium de Wigheo scituato ab occidente usque ad magnum oceanum in plago orientati duclam devesam et inter melam ellam a meridie usque ad partem ellam estuarie de Delaware ab aqulone quœ subjacet quadragesimo gradree latitudinis septentionatis ad equenoctiate ube termunatis Nove Anglia totuonque illiuv tena tractiem infer melas subscriptas transciends a decto estuario vocato Delaware bay recter linea per gradum predictum usque ad verium meridianum primi fontis flumeous de Patowmack demde vergendo versus meridium ulteriorem dulc fluminis repam et ceru sequendo qua plago occidentatis meudeonalem spectal usque a locum quendam appelladum Cinquack prope equisdum fluminis astium scetuatum ubi in prœfatum senum de Chesapeake evoluter ae inde per liniam usque ad predictum promontowum sive locum vocatum Watkins point.

[Translation of page 16.]

All that part of the peninsula or chersonese lying in the parts of America, between the ocean on the East and the bay of Chesapeake on the West, divided from the residue of the same by a right line drawn from the promontory or headland called Watkins point, situate near the bay aforesaid, near the river of Wighco, on the West, unto the Great ocean on the East; and between that boundary on the South, unto that part of the estuary of Delaware on the North, which lieth under the 40th degree of latitude North

of the equinoctial, where New England is terminated; and all the tract of that land within the metes underwritten (to-wit,) passing from said estuary, called Delaware, in a right line, by the degree aforesaid unto the true meridian of the first fountain of Patowmack; thence verging towards the South to the further bank of the said river, and following it by the Western edge, where that looks to (or inclines to) the South, unto a certain place, called Cinquack, situated near the mouth of the same river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line into the aforesaid promontory or place called Watkins point.

Cecelius Calvert, Baron of Baltimore, in Ireland, June 20th, 8th year of Charles I., 16—.

Faulkner to Wise—Relating to his Report on Boundary, in 1831–'32.

MARTINSBURG, May 1st, 1871.

Hon. HENRY A. WISE.

Dear Sir—I have just returned home after an absence of two weeks, and received your favor the 20th inst.

On the 20th March, 1832, a resolution was adopted by the general assembly of Virginia, requesting the governor to obtain certain documents and testimony relating to boundaries of the States of Maryland and Virginia.

See Session Acts, 1831–32, page 308. In pursuance of power conferred by this resolution, I was appointed by the elder Gov. Floyd to procure the documents and testimony there referred to.

I completed my report early in November of that year, and transmitted it to Gov. Floyd, who laid it before the general assembly in his message of December, 1832.

You will find my report embraced in document No. 1, accompanying that message. You will also find immediately preceding my report the views of Maryland upon the same subject.

My report was accompanyed by many interesting historical documents, which are particularly referred to in it. I deposited all these documents with the secretary of the commonwealth and librarian, and I know they were preserved for some years afterwards; but I learn by some publications, which I have seen in the Richmond papers, that

they are no longer to be found in the public library of the State. I have no recollection of ever having had the benefit of any suggestions of Gov. Tazewell in the preparation of that report.

I remember some years after that report was prepared, and when Mr. Tazewell was governor of the State, he invited me to dine with with him, and after dinner he read to me an elaborate and very interesting essay which he had prepared, claiming the Monocacy river as the true dividing line between Maryland and Virginia.

His views were forcible and ingenious, but they left no further impression on my mind than an admiration of the rich resources of his mind.

I am,

Very truly and sincerely yr. friend,

CHS. J. FAULKNER.

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